

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

996

BRIEF FOR APPELLANT AND APPENDIX

United States Court of Appeals
For The District Of Columbia Circuit

No. 24, 027

CANDIS O. RAY,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

JEFFERSON STANDARD BROADCASTING COMPANY
(LICENSEE WBTV),

Intervenor,

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 8 1970

Appeal from the Federal Agency, The
Federal Communications Commission.

Nathan J. Paulson
CLERK

CANDIS O. RAY
Pro se

2700 Connecticut Avenue, N.W.
Washington, D.C. 20008



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STATUTES

United States Court of Appeals

For The District Of Columbia Circuit

No. 24, 027

CANDIS O. RAY,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

JEFFERSON STANDARD BROADCASTING COMPANY
(LICENSEE WBTV),

Intervenor,

Appeal from the Federal Agency, The
Federal Communications Commission.

BRIEF FOR APPELLANT

The appellant Candis O. Ray prays that consideration herein
will cause to issue a hearing before the Federal Communications

Commission to clarify the conflicting statements and contradictory affidavits on file in this cause.

ISSUES PRESENTED

1. Did the FCC properly exercise its authority by ruling on the hearsay affidavits from officers of licensee WBTM speaking for those WBTM staff employees with whom appellant had direct dealings, and refusing to obtain affidavits from those named WBTM personnel with whom appellant had the direct dealings in the FCC ruling of 1961?
2. Did the FCC abuse its discretion in permitting licensee WBTM to evade answering specific charges in the original and subsequent complaint filings, and by granting license renewal in the original complaint filed by appellant without either, the FCC or licensee, notifying applicant of licensee WBTM's answer, and denying appellant a chance to reply to same?
3. Did the FCC rule properly and just in granting license renewal disregarding the contradictory affidavits and conflicting sworn statements on file concerning the material issues and the heart of the matter without calling a hearing to examine the available evidence offered?
4. Did the FCC err in delegating authority back down to the same staff level whose rulings appellant was appealing on review?

STATEMENT PURSUANT TO RULE 8(d)

Pursuant to Rule 8(d) of the General Rules of this Court, appellant states to the Court that the pending case has NOT previously been before this Court under the same or similar title.

INTRODUCTORY STATEMENT

This appeal is not based on the FCC rulings of 1967, as suggested in its Memorandum Opinion and Order released February 16, 1970 (App. 2) as final order, as the FCC acted on Appellant's filings in 1969 and 1970, and those filings of licensee WBTV in reply thereto.



JURISDICTIONAL STATEMENT

The jurisdiction of this court is conferred by Title 47, U. S. C., Section 155 (d), (1), (4) and Section 402, Title 47, U. S. C.

REFERENCES TO RULINGS

The Federal Communications Commission ruled February 16, 1970 pursuant to Federal Communications Commission procedure under Section 405 I FCC 2nd 949 (1965). Appellant had filed Petition under Section 155 (d), (1), (4), Title 47, U. S. C.

STATEMENT OF THE CASE

The appellant, Candis O. Ray, was born and raised in Lenoir, North Carolina, in close proximity to Charlotte, North Carolina, home of Station WBTV (Jefferson Standard Broadcasting Company). Appellant's heritage dates back to the first colony settlers, as recorded in history books of Western North Carolina pilgrimage, when three Ray brothers "from the England Coast" landed on American soil to carve, through many hardships, his own destiny and that of his chosen country. Each, in his own way contributed much to this country's progress, according to his talents; politics (government management), finance and teaching. Appellant's immediate paternal grandfather, the Honorable A. William Ray, served as Mayor of Newland North Carolina until his death in 1944, transmitting honorable awards and cherished legacies to his heirs.

For the past twelve years the appellant has been a resident of Washington, D. C. where she is well known and operates a public relations and advertising firm under title of Candis O. Ray and Associates.

Appellant has more than thirty years' background of experience and recognition in the radio and television and the advertising agency

industry, having begun her career with a CBS Station in Atlanta, Georgia in 1940 with experience including Script Writing, Program Productions, Announcing, Program Department Head, Commercial Department Management, the Station Management, to ownership of an advertising agency in areas of Atlanta, Georgia, Hollywood, California and New York City.

At age 26 the appellant established and operated her own recognized advertising agency specializing in program productions, and the only such program production company recognized in the South at that time, evidenced by the telephone company yellow pages, which new heading had to be made.

Appellant's agency success and leadership was evidenced by subsequent requests for participation in civic leadership and projects; her nomination for Business Woman of the Year in 1948; by solicitation of the United States Veterans' Administration to participate in the Train-On-The-Job Program under the G. I. Bill of Rights in teaching World War II Veterans under her agency operation the Advertising Agency-Client-Station operation, Script Writing, Program Productions and Sales Psychology in which solicited project appellant cooperated, as the records disclose. Simultaneously, at that time appellant taught classes in above subjects at the University of Georgia at the request of the Advertising Professors for their desired purpose of supplementing the text with practical application of successfully produced current programs.

Desiring to establish such a specialized advertising agency in her home state of North Carolina for the convenience of some of her regional agency clients such as Rich's Whip Topping and others, appellant contacted Mr. Charles Crutchfield, Station Manager of WBTV, THE ONLY Television Station in Charlotte at that time, operating as a monopoly in the area.

Whereupon, as a result of the visit, a specific contract ensued wherein appellant was obliged to spend great sums of money in the execution thereof.

Although there was violation of the contract by station WBTM appellant did not file her complaint and Protest of License Grant on the contract breach in December 8, 1960; the said Protest, upon which this appeal is based, is filed on "business practices" and "Character Qualifications" as provided in Section 309(c) of the F. C. C. Act, as established in the opening paragraph of the Protest.

The Commission acted on said Protest and withheld issuance of license renewal to licensee WBTM pending its investigations of the charges in appellant's Protest, and so advised appellant by letter dated January 17, 1961, as follows:

"This is with reference to your letter of December 5, 1960 and the enclosed "Protest of License Grant" *****accordingly, your "Protest of License Grant" is being treated by the Commission as a complaint against said licensee."

Appellant was never notified by either the FCC or licensee WBTM that WBTM had responded to appellant's above-mentioned complaint (Protest) and had filed a lengthy answer, with attached affidavits by the officers of licensee WBTM speaking for those WBTM staff members mentioned in appellant's Protest with whom appellant had direct dealings, and ignoring completely specific charges in the Protest.

Appellant had no knowledge whatever that licensee WBTM had answered her complaint (Protest) until receiving a letter from the F. C. C. dated May 17, 1961 that it had renewed WBTM's license, yet the records reveal that appellant had requested in correspondences to the F. C. C. to please advise her of the WBTM answer and allow her a chance to reply to same.

Upon receiving the letter of license renewal from F. C. C. dated May 17, 1961, appellant immediately sought to review WBTM's answer in the public reference room of the F. C. C., and reported the false statements sworn under oath by the officers of licensee WBTM. Upon receiving the report from appellant the F. C. C. advised appellant that it was too late to do anything; that it had already renewed WBTM's license.

Subsequent filings and evidences offered by appellant were rejected without further investigation by the F. C. C. into the contradictory statements and extrinsic conflicting affidavits concerning the material issues herein. The F. C. C. continued to wrongly advise appellant that it could not act, and had no authority to act on any new evidence until another three years passed when the licensee would file an application for renewal of license, thus the F. C. C. has further aggrieved appellant by depriving her of immediate action and a hearing to clarify the contradictory affidavits on file, and dispense with the complaint matter.

The last action of this complaint matter, which complaint has been unmercifully and pitilessly drawn out by the F. C. C., was taken on February 16, 1970 by Memorandum Opinion and Order (Appendice 2) as a result of appellant's complaint and Petition For Review filed November and December, 1969, which action by F. C. C. nullifies the 1967 orders as final orders, inasmuch as F. C. C. took action and accepted filings from licensee WBTM in its consideration of appellant's 1969 filings, above listed, (Appendices 2, 4, 5, 6, 7 & 8) notwithstanding the fact that two clear and distinctly contradictory "By Order" releases for basis of F. C. C. rulings in consideration of appellant's charges - which is crux of this complaint matter before the F. C. C. - is currently on F. C. C. record in the 1967 ruling (Appendices 4, 5, 7 & 8).

Note should be taken that the F.C.C. has contended that appellant's complaint deals with a private contract matter, although appellant's charge has been questionable business practices and character qualifications, with supporting evidence of extrinsic affidavits conflicting with sworn statements of licensee. Only recently, AFTER the issuance of the October 27, 1967 order did the FCC cite the true charge by appellant of character qualifications and misrepresentation by licensee, as evidenced in the F.C.C. corrected "By Order" release dated December 1, 1967, authorized by F.C.C. Commissioner Kenneth A. Cox (Appendice 3).

As a result of the aforesaid and delegation of authority by F.C.C., appellant filed the herein appeal.

SUMMARY OF ARGUMENT

The appeal herein is based on the procedural actions of the F.C.C., and does not involve the correct or incorrect procedural actions of the licensee WBTV, whose responses, if any, as an intervenor should not be considered.

In light of the inconsistency of the F.C.C. by its October 25, 1967 order, and changing "By Order" on December 1, 1967 the basis for its ruling applying a completely different charge necessitating investigation of the offered evidences and clarification of the contradictory affidavits and conflicting statements on file concerning the crux of this complaint matter especially as it relates to the changed "By Order" complaint grounds, the October 25, 1967 order is not final order in complaint matter herein.

The F.C.C. acted on appellant's complaint filed September and November, 1969 (Appendices 6, 7 & 8) and her Petition For Review filed December 22, 1969 (Appendices 2 & 9), thereby invalidating any final order disposition of the matter herein, as F.C.C. accepted appellant's filings, and those of the licensee WBTV, timely ruling within the required statute, re same.

The delegation of authority by F. C. C. in ruling by order released October 27, 1967 re appellant's Petition For Review is in violation of the legal requirements vested in the F. C. C. by the Congress under Section 155(d), (1), (4), Title 47, U. S. C. A., as established.

ARGUMENT

HEARING SHOULD BE HELD TO
CLARIFY THE CONFLECTING STATEMENTS AND
CONTRADICTORY AFFIDAVITS HEREIN

FCC CHANGED BASIS FOR RULING
NULLIFIES ORDER DATED OCTOBER 27, 1967

FCC'S ILLEGAL DELEGATION OF AUTHORITY
PREJUDICES APPELLANT AND IS VIOLATION OF SECTION 155
(d), (1), (4), Title 47, U. S. C. A.

The Commission ignored completely appellant's itemized list of false statements sworn under oath by licensee WBTV in its 1961 answer (Appendices 10, 11).

The Commission ignored subsequent filings by appellant in regard to the conflicting sworn statements on file with the F. C. C. in this complaint matter, as evidenced by the record.

The Commission, arbitrarily and capriciously, prejudiced appellant by its refusal to investigate evidence offered by appellant and further oppressed appellant by deliberately stringing out this complaint matter and prolonging its administrative duties by advising appellant wrongly; (1) that it did not have the powers to act on the new evidence offered, (2) that appellant would have to wait again another three year period when the licensee would file for application for license renewal.

This complaint matter before the Commission has been on-going for years and years - dragged out by the Commission's dereliction

of duties and wrongly advising and misguiding appellant in its protection of licensee WBTV, with appellant being further aggrieved - due to the refusal of the Commission to hold a hearing on the conflicting sworn statements on file, and the refusal of the Commission to investigate fully the evidence it has before it filed in this case.

"The Commission's conclusions must be based on findings supported by available evidence." Hall v. Federal Communications Commission, 1958, 257 F. 2d 626, 103 U. S. App. D. C. 248.

All available evidence shall be evaluated:

"The ultimate facts upon which orders of the Commission are based must bear some rational relationship to basic facts shown by the evidence." TRI-STATE BROADCASTING COMPANY v. FEDERAL COMMUNICATIONS COMMISSION, 1938, 96 F. 2d 564, 68 App. D. C. 292."

The Commission's actions were clearly deliberate, arbitrary and capricious in renewing WBTV's license on date May 17, 1961, refusing Appellant a chance to review and answer WBTV, and declining available evidence offered by Appellant; and further by permitting WBTV to evade answering the specific charges in Appellant's Protest, especially as it pertained to the named WBTV staff personnel with whom Appellant had direct dealings, yet the Commission did accept the hearsay statements of officers of licensee WBTV speaking for those WBTV staff employees with whom Appellant had direct dealings.

"***** unless it appears that findings are arbitrary or capricious implied that there should be a public hearing, that evidence should be taken and preserved, that facts should be found by Commission, and that receiving court should have jurisdiction to deny effect to an order made without any supporting evidence or contrary to evidence, or if hearing or decision was inadequate, unfair, or arbitrary." Missouri Broadcasting Company v. Federal Communications Commission, 1938, 94 F. 2d, 623 68, App. D. C. 154.

FCC CHANGED BASIS FOR RULING NULLIFIES ORDER DATED
OCTOBER 27, 1967

It should be noted that the F.C.C. based its determination of evaluation of this complaint matter on the "contract" matter appellant had with licensee WBTM as stated in F.C.C. letter of license renewal addressed to appellant on January 26, 1967, page 5, top (Appendice 5, p. 14 and Appendix 8, p. 23).

The F.C.C. states,

"***** it would only bear on whether a contract existed and not on the issue of alleged misrepresentation."

In the same complaint matter the F.C.C. changed the basis for its ruling on date December 1, 1967 and 'By Order' the correction was issued stating the contrary of above ruling causing order issue dated October 27, 1967.

Accordingly, since the F.C.C. based its license renewal to WBTM on its evaluation of the contract matter "and not on the issue of alleged misrepresentation," as stated in F.C.C.'s above-noted letter of license renewal to WBTM in January 26, 1967 it follows that the renewal inconsistent with the F.C.C. rules IS INVALID, and must not take precedence over the appeal herein.

The F.C.C. December 1, 1969 Public Notice, released "By Order" correcting the October 27, 1967 basis for ruling, states as follows:

"Her request is grounded on her allegations that the licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. ('By Order. ')"

The F.C.C. charges a different basis for ruling in the prior Public Notice dated October 27, 1967, released also "By Order," which states as follows:

'Her request is based on a breach of contract dispute with WBTV. ("By Order.")'

Attention is directed to all F.C.C. rulings and correspondences to appellant which state basis for ruling by F.C.C. is the contract matter, irrespective of the charge by appellant and filed evidence supporting same.

Clear prejudice is displayed by the F.C.C. in its refusal to explore the available evidence, and by its prejudiced and determined actions of fluffing off the complaint without complying with the rules, displaying arbitrary and capricious actions thereby:

"Commission's own interpretation of its rule is ultimate criterion and is entitled to controlling weight unless it is plainly erroneous or inconsistent with the rule."
(Emphasis added.)

Daly v. U. S., C. A. 7, 1961, 286 F. 2d, 146.

Commission must rule on all available evidence, and base its rulings and orders on the CORRECT charge made by complainant at the time it issues its rulings and orders.

It cannot be denied that the F.C.C. has all along since this complaint matter was first filed in 1960 issued all of its rulings and orders erroneously on the "contract" matter and its repeated "private controversy" which in the light of F.C.C. changing the basis for its ruling on December 1, 1967 to "misrepresentation" (of licensee) eradicates the F.C.C. orders and rulings in this same complaint matter, especially in light of the fact that F.C.C. has not exercised its expertise in exploring the conflicting affidavits and statements and other available evidence to correspond with its change of order and basis for ruling re same, thereby F.C.C. may not be awarded "administrative finality."

"On review of a decision of the Commission the U. S. Court of Appeals for the District of Columbia may correct errors of the law, and on remand the Commission is bound to act on the correction."

Federal Communications Commission v. Pottsville Broadcasting Company, 1940, 60 S Ct., 437, 309 U. S. 134, 84 L. Ed. 656.

The F. C. C. disregarded conflicting written statements and affidavits on file, as filed December, 1960, in the original Protest and in all other subsequent filings, in this complaint matter.

Dereliction of duty is evidenced by the F. C. C. in its refusal to obtain affidavits from the WBTV personnel with whom appellant had the direct dealings; i. e., Samuel Zurich, Paul Marion, Wallace Gorgenson, etc., as outlined in appellant's original complaint filed with the F. C. C. in December, 1960 and all filings thereafter, however the F. C. C. did permit WBTV to file affidavits by Officers of WBTV speaking for those WBTV personnel with whom appellant had the direct dealings, and the F. C. C. ruled on that hearsay evidence.

Appellant was further denied service by the F. C. C. and licensee WBTV with licensee's answer to her Protest acted on by the F. C. C. in 1961. The F. C. C. sent a copy of appellant's Protest to WBTV for answer AND WITHHELD LICENSE RENEWAL for a period of five and a half months yet appellant was denied a chance to review the WBTV Answer to her Protest, and reply to same.

Appellant has been further aggrieved by F. C. C.'s reluctance to efficiently and effectively use its expertise to expedite expediency and resolvement in this complaint matter by; (1) dragging out the case and prolonging it, (2) wrongly advising appellant it (F. C. C.) could not act on new evidence submitted until the licensee applied for license renewal at the end of another three year period, and that she must wait and go through regular channels again.

"Under this section review of the Commission action is granted any party aggrieved or suffering legal wrong by that action. U. S. v. Storer Broadcasting Company, App. D. C. 1956, 76, S. Ct., 763, 351, U. S. 192, 100 L. Ed., 1081."

FCC'S ILLEGAL DELEGATION OF AUTHORITY PREJUDICES APPELLANT

Further prejudice by the F. C. C. is evidenced by its illegally delegating authority in Petition For Review filed by appellant December 19, 1969 (Appendice 5, p. 10-16) and by order released October 27, 1967 (Appendice 9) which delegation prejudices appellant depriving her constitutional rights, as the delegation is not in accord with the legal requirements of Section 155 (d), (1), (4), Title 47, U. S. C. A., which states as follows:

"(d) (1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions (except functions granted to the Commission by this paragraph and by paragraph (4)"

"(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report or action made or taken pursuant to any delegation under paragraph (1) of this subsection."

CONCLUSION

For the reasons stated above it is respectfully requested that order issue for an evidentiary hearing before the F. C. C. for purposes of clarifying conflicting sworn statements.

Respectfully submitted,

Candis O. Ray,
Appellant, Pro se

2700 Connecticut Avenue, N. W.
Washington, D. C. 20008

July 8, 1970

(i)

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PREFACE TO APPENDICES

Pursuant to Rule 30(a) of the Federal Rules of Appellate Procedure, the appendices hereto comprise the relevant documents on appeal herein.

However, for the convenience of the court, through mutual effort and cooperation by appellant and counsel for the Federal Communications Commission, all missing documents have been carefully collected and accurately filed in the original record, which is available in two voluminous dockets.



APPENDICE 1
PAGE 1

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

CANDIS O. RAY,)
Petitioner)
v.) PETITION FOR REVIEW
Federal Communications Commission,)
Respondent)

Candis O. Ray hereby petitions the court for review of the Order released by the Federal Communications Commission on February 16, 1970 which Order was issued under delegated authority, pursuant to Federal Communications Commission procedure under Section 405 I F. C. C. 2nd 949 (1965), whereas the Petition For Reconsideration filed by Petitioner on date December 19, 1969 was properly filed by Petitioner under Section 155 (d), (1), (4). Title 47, United States Code Annotated, which does not permit the Federal Communications Commission to delegate this authority.

Also, the aforesaid Order did not take cognizance of conflicting statements on file with the Federal Communications Commission, but did consider matters not in issue in this Petition; as such, Petitioner is entitled to a hearing.

/s/ Candis O. Ray
Petitioner

Pro se
2700 Connecticut Avenue, N. W.
Washington, D. C. 20008
483-9495
223-1113

March 17, 1970

APPENDICE 2
PAGE 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)

JEFFERSON STANDARD BROADCASTING COMPANY) File No. BRCT-55
Charlotte, North Carolins)

For Renewal of License of)
Station WBTV)

MEMORANDUM OPINION AND ORDER

Adopted: February 11, 1970 Released: February 16, 1970

By the Commission:

1. On December 22, 1969, Miss Candis O. Ray filed an Application for Review directed against the actions of the Chief, Broadcast Bureau, in granting the above-entitled application and dismissing her complaint of November 24, 1969 as repetitious. This application for review is opposed by Jefferson Standard Broadcasting Company. The Commission has considered Miss Ray's allegations against this licensee for the past four renewal periods.

2. This controversy between Miss Ray and the licensee has been in existence for almost two decades. Her allegation that the licensee misrepresented material facts to the Commission has previously been thoroughly reviewed by the Commission, as evidenced by our numerous letters to Miss Ray and our Order of October 27, 1967. The presentation in the Application for Review on the question of misrepresentation adds nothing of substance that has not already been the subject of our careful consideration. We could thus simply state that we adhere to our prior determination on the matter, and for the reasons previously stated. There is, however, a further point. Since this matter has been considered before, Miss Ray is essentially asking for a reconsideration of the Order which became final in 1967. There is clearly a need for administrative finality. Indeed, we believe that the Commission is precluded from the consideration of the matter by the thrust of Section 405 of the Communications Act of 1934, as amended. Newforte, Incorporated, 1 F.C.C. 2d 949 (1965).

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3. In view of the foregoing, the Chief, Broadcast Bureau, acted properly in dismissing Miss Ray's complaint.

4. Accordingly, IT IS ORDERED, That the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Secretary

cc:

Jefferson Standard Broadcasting Company
R. Russell Eagan, Esquire
Candis O. Ray

APPENDICE 3

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

November 30, 1967

Miss Candis O. Ray
1545 Eighteenth Street, N. W.
Washington, D. C. 20036

Dear Miss Ray:

This is in response to your letters of November 22nd and 25th with regard to your protest against the renewal of the license of WBTV. I have examined the Public Notice of October 25, 1967, and it does appear that the last sentence is misleading. I have therefore arranged for a corrected Notice to be issued, and am asking Mr. Weinles to send copies of this revised Notice to you.

Very truly yours,

/s/ Kenneth A. Cox

Filed January 9, 1970

APPENDICE 4
PAGE 4

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of Application of:

JEFFERSON STANDARD BROADCASTING

COMPANY (WBTV)

Charlotte, North Carolina

) FILE NO. BRCT-55

Re: Renewal of License

To: The Commission

REPLY TO

**OPPOSITION TO PETITION FOR RECONSIDERATION FOR HEARING
WHICH IS APPLICATION FOR REVIEW BY THE COMMISSIONERS**

Comes now the Petitioner, Candis O. Ray, and files this Reply to the Opposition To Petition For Reconsideration For Hearing Which is Application For Review By The Commissioners, filed herein on December 31, 1969 by Jefferson Standard Broadcasting Company (WBTV). Petitioner respectfully shows and states as follows:

THE COMMISSION ERRED IN DELEGATING AUTHORITY BACK DOWN TO THE BROADCAST LEVEL AFTER PETITIONER FILED APPLICATION FOR REVIEW ON JUNE 26, 1967 IN THE HEREIN PETITION

**F. C. C. ORDER DATED OCTOBER 25, 1967
IS VOID AND NULL.**

The foregoing order dated October 25, 1967 is void and null in light of Petitioner's Application For Review of the actions taken by the Broadcast Bureau (Applic. For Review filed June 26, 1967). The law

does not permit the Commission to delegate this authority, as clearly spelled out in the United States Code Annotated Title 47, Section 155 (d) (1) (4):

"(d) (1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions (except functions granted to the Commission by this paragraph and by paragraphs (4)....."

"(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken pursuant to any delegation under paragraph (1) of this subsection."

DELIBERATE CIRCUMVENTION BY LICENSEE WBTM

Clear deception is evidenced in Licensee WBTM's Opposition filed herein on December 31, 1969. Through its attorneys, in quoting the Federal Communications Commission rules and regulations and the United States Code, as applied, the Licensee is deliberately circumventing the law as set forth herein, and further misleading the Commission again as to Petitioner's true charge, which is Character Qualifications in this complaint matter before the Commission instead

of the continued contention of WBTM that Petitioner's charge is
breach of contract. ^{1/}

WBTM, in an attempt to distract the Commissioners and throw off the true charge, continues to harp on the contract matter, knowing full well that the true charge here is Character Qualifications of the licensee. Apparently Licensee WBTM would have Petitioner change her charge. (See Pet. filed December 19, 1969 for history re same.)

Petitioner should certainly know on what charge she is basing her complaint before the Commission, and it is explicitly established by Petitioner that her complaint herein is based on Character Qualifications of the Licensee WBTM - because of false statements sworn under oath by Officer of WBTM, which sworn statements are refuted by at least three affidavits appended to Petitioner's "Petition For Rehearing and Reconsideration," made a part herein, and filed February 27, 1967.

WBTM CONTINUES TO EVADE ANSWERING CHARGES

WBTM deliberately left unanswered the specific charges by Petitioner in the Petitions filed herein, and which charges have been

1/ Petitioner had continuously charged Character Qualifications of Licensee WBTM, stating emphatically that the F. C. C. has no jurisdiction over private controversies, and private contract matters, and that this is her knowledge (See Pet. filed December 19, 1969, Attachment # 2, page 2). (See also, same Pet. filing, Attachment # 2, page 3: "WHETHER OR NOT A CONTRACT EVER EXISTED IS NOT THE COMPLAINT HERE BEFORE THE F. C. C. AGAINST LICENSEE WBTM.....")

supported by Petitioner with affidavits and extrinsic corroborative evidence. WBTM is completely silent as to specific charges.

WBTM chose to "respond" to Petitioner's verified allegations with unverified and vague assertions, evading responsive rejoinder. This clear aversion by WBTM to answer specific charges establishes guilt beyond any reasonable doubt.

Licensee WBTM's current Opposition filed December 31, 1969 too obviously again lacked any response whatsoever to the very serious charge that WBTM has refused to come forward with any documents of admissions or denials in sworn statements from the herein referred-to key witness Samuel Zurich and from the exact WBTM personnel with whom Petitioner had direct dealings, namely Mr. Paul Marion and Mr. Wallace Gorgenson, both currently employed by Jefferson Standard Broadcasting Company (WBTM) (See Pet. filed December 19, 1969, page 6); also reference is made in this connection in Petitioner's filing in this complaint matter on March 21, 1967, page 8, which filing is made a part of this Petition:

"WBTM has come forward with no affidavits to deny the substance of the serious and pointed affidavit charges of Petitioner; rather WBTM has ignored them altogether. At a hearing Petitioner will adduce each fact set forth in its Petition and this Reply. WBTM at some time should be called to account. That time is at a Commission public hearing." (Underscored by Petitioner for emphasis.)

"A TRAGIC ERROR"

Licensee WBTM's entire "Opposition" to this Application For Review filed December 31, 1969 with the Commission is wholly dedicated and confined to upholding the erroneous rulings and opinions of the Broadcast Bureau by supplying numerous excerpts from and references

to that tragic and clearly prejudiced Letter of Renewal by the Broadcast Chief dated January 26, 1967, on which these Petitions and this current Application For Review, in appealing those errors, is based. Reference to that specific Letter of License Renewal, above stated, is made by Petitioner's counsel in the resulting Petition filed February 27, 1967,
page 21: ^{2/}

"The letter of January 26, 1967 was a tragic error."

* * * * *

It is not necessary for Petitioner to answer the repetitious and clearly erroneous statements by Licensee WBTV in its "Opposition" filed December 31, 1969 as the same is completely covered by Petitioner in her filings with the Commission in this matter.

ILLEGAL DELEGATION OF AUTHORITY IS DELAYING FACTOR

BY F. C. C.

This Application For Review Properly
Lies At This Time

Standing

Petitioner has standing as a person aggrieved within the meaning of Section 405 of the Act and the Commission's Rules. Beyond this, Petitioner was a party to the "proceeding" which gave rise to the Commission actions complained of (Pet. pp. 1-2). In point of fact, the "proceeding" which resulted in the Commission's public notice

2/ Commissioners' attention is directed to that fateful Letter of License Renewal dated January 26, 1967 by the Broadcast Chief wherein it is erroneously stated that Petitioner's complaint "would only bear on whether a contract existed and not on the issue of alleged misrepresentation." Incredible statement!!

of January 27, 1967 and letter to Petitioner of January 26, 1967 (Pet. pp. 1-2) followed directly from Petitioner's complaints to the Commission. That type of "proceeding," within the intent of Section 405 of the Act, involves "regular and orderly progress in form of law," Black's Law Dictionary, Fourth Edition. See Gerico Investment Co. v. Federal Communications Commission, 99 U. S. App. D. C. 379, 240 F. 2d 410 (1957).

Conclusion

The conflicting sworn statements on file herein compels the Commissioners to schedule an evidentiary hearing pursuant to law.

Respectfully submitted,

/s/ CANDIS O. RAY
Petitioner, Pro se
2700 Connecticut Avenue, N. W.
Washington, D. C. 20008

[CERTIFICATE OF SERVICE]

1 Filed December 19, 1969

APPENDICE 5
PAGE 10

Before The
FEDERAL COMMUNICATION COMMISSION
Washington, D. C.
20554

In the Matter of Application of:)
JEFFERSON STANDARD BROADCASTING)
COMPANY (WBTV))
Charlotte, North Carolina) FILE NO. BRCT-55
Re: Renewal Of License)
To: The Commission)

**PETITION FOR RECONSIDERATION
FOR HEARING**

Now comes Candis O. Ray, the Petitioner, and requests reconsideration for a hearing as it pertains to captioned numbered matter and in consideration with and furtherance to her Petition filed February 27, 1967, and in support thereof offers the following to substantiate her Petition:

THE COMMISSION ERRED IN DELEGATING AUTHORITY BACK DOWN TO THE SAME DEPARTMENTAL LEVEL WHOSE RULING PETITIONER WAS APPEALING IN THE FILING OF HER PETITION FOR REHEARING AND RECONSIDERATION ON DATE FEBRUARY 27, 1967.

F. C. C. Order dated October 25, 1967
Is Void and Null.

The order issued by the Federal Communications Commission on October 25, 1967 (Attachment # 1) is void and null in light of the Petitioner's subsequent Petition for Review of the actions taken by the Broadcast Bureau. The law does not permit the Commission to delegate this authority as spelled out in U. S. Code Annotated, Title 47, Section 155 (d) (4).

2 CONTINUED ERRORS OF BROADCAST BUREAU IN CURRENT LETTER OF RENEWAL GRANT DATED DECEMBER 4, 1969

In furtherance thereto, and in connection with the current license application filed by Licensee WBTV on date September 2, 1969 and Petitioner's filed complaint dated November 24, 1969 re same (Attachment # 2) note the Broadcast Bureau's Letter of Renewal dated December 4, 1969 (Attachment # 3) wherein the following errors exist:

1. The Broadcast Bureau is completely in error in stating (para. 2) that there are not in fact "Two distinct contradictory opinions and rulings 'By Order' of F. C. C." in this complaint matter, and the Bureau is further in error in the same paragraph in stating that this Petitioner's "statement that the Commission has issued 'contradictory opinions' is without foundation." Disproving those statements by the Bureau, Petitioner submits the following:

The F. C. C. Order dated October 25, 2967 (Attachment # 1) and the resulting Public Notice (Attachment # 4) released on the same day, reflecting the opinion of the

Broadcast Chief, wherein the following quoted last sentence exists: "Her request is based on a breach of contract dispute with WBTV. (By Order.)" (Underlining supplied by Petitioner.)

3

2. Clear and distinct contradictory opinions and rulings "By Order" of the F. C. C. exist on the F. C. C. Records in this same complaint matter. See Public Notice dated December 1, 1967 (Attachment # 5) wherein it is stated "By Order:" "Her request is grounded on her allegations that the Licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. (By Order.)" (Underlining by Petitioner) Appended hereto (Attachment # 6) is a copy of a letter dated November 30, 1967 from Federal Communications Commissioner Kenneth A. Cox to the Petitioner regarding the ordered correction of ruling in issuing the new Public Notice in this same complaint matter and wherein he states: "I have examined the Public Notice of October 25, 1967 and it does appear that the last sentence is misleading. I have therefore arranged for a correct Notice to be issued....." (Note the ruling correction was made "By Order" in the Public Notice dated December 1, 1967 and released "By Order" of the Federal Communications Commission.)

3. Continued errors and conflicting opinions and rulings by the Broadcast Bureau is evidenced in the same Letter of License Renewal dated December 4, 1969 (para. 3.) wherein it is stated "The second, alleged error (charged by Petitioner in complaint filed November 24, 1969) committed by the Commission was

that it considered the contractual dispute and not the allegations of deliberate misrepresentations" and "...consideration has been given to your allegations of deliberate misrepresentations by the Licensee as stated in the Memorandum Opinion and Order of May 25, 1967, the Order of October 27, 1967....."

(The following belies that statement and is the crux of the matter necessitating Petitioner to file the original Petition For Rehearing and Reconsideration on February 27, 1967 appealing these errors of the Broadcast Bureau.)

4

(a). Whereas in direct conflict with the above quoted statements by the Broadcast Chief, attention is directed to the Commission's illegally designated reference to the Broadcast Chief's actions in its Refusal to Review same (Underscored and capitalized by Petitioner for emphasis.) in Order dated October 25, 1967 (Attachment # 1). The Commission's reference in said Order in its refusal to review the "actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above entitled application...."

The Broadcast Chief's continued contradictory rulings and Opinions are evidenced in that very letter referred to by the Commission; to wit:

Quote by Broadcast Bureau Chief in Commission's referred to Letter of Renewal dated January 26, 1967 (found in the original Petition For Rehearing and Reconsideration filed with the Commission February 27, 1967 which Petition, made a part of this Petition, refers to that particular matter

quote by the Broadcast Chief (page 20, bottom and 21, top) wherein it is revealed the following ruling by the Broadcast Chief in that Letter of License Renewal dated January 26, 1967 (page 5, top): (erroneously referring to Petitioner's complaint charge) The Broadcast Chief stated....
"...., it would only bear on whether a contract existed and not on the issue of alleged misrepresentation." (Underlining by Petitioner.)

4. Further disproving the Broadcast Chief's statements in his Letter of License Renewal dated December 4, 1969 wherein he states that the Commission does not consider contract matters or private controversies..... It will be noted that the Broadcast Bureau has erred in this regard, and conflict of the Bureau's rulings and opinions is again revealed: Among other errors contained therein, note the specific content of the Memorandum Opinion and Order dated May 25, 1967 (Attachment # 7) which ruling is by the Broadcast Chief (page 1, para. 3) Quote, "By letter dated May 17, 1961 we denied Petitioner's request for a hearing and granted WBTV's renewal application -- concluding that her complaint was a private controversy....." (Underlining supplied by Petitioner.)

5
NOTE: This Petitioner has repeatedly stated in all of her complaints before the Commission in this matter from the very beginning when it was first reported to the F. C. C. that the complaint charge is on Questionable Business Practices and not on the contract matter (See Petition For Rehearing and Reconsideration filed by Petitioner's counsel February 27, 1967 wherein counsel states (page 8 of Application For Review..... "Petitioner

is not asking the Commission to resolve any question about the Commission's jurisdiction over the contract The subject matter of the deceit is no bar to the Commission, whether it be breached contract, false affidavits, a perjury indictment, or whatever. The fact that there has been deceit to the Commission and its bearing upon the fitness of WBTV to continue as a Commission Licensee are all important to the public interest. In Community Radio of Saratoga Springs, New York, Inc. (3 RR 2d 644 at 646), The Commission stated....."

The foregoing clearly sets forth that the Broadcast Bureau has deliberately misinterpreted the complaint charge by continuously basing its conclusions and rulings on the "contract matter" and "private controversy" instead of the true charge by Petitioner of Character Qualifications of Licensee.

6 Any and all delays to date, including the continued harrassment and persecution to the Petitioner herein, are attributable to the continued erroneous delegation of authority by the Commission and the Commission's inaction in failing to comply with the law as stated on page 1 of this Petition U. S. Code Annotated, Title 47, Section 155 (d) (4).

Numerous conflicting affidavits and statements are on record in this matter before the Commission, such as that sworn statement of WBTV which states that no notes were taken on what Mr. Zurich said during that referred-to conference in Mr. Crutchfield's office; whereas the attached copies of letters, identified as Attachments appended to the original Petition For Rehearing

and Reconsideration numbered 9, 10, 11, addressed to the Petitioner herein by Samuel C. Zurich, a then employee of WBTV, refutes said sworn statement.

This coupled with the continued and deliberate design of the Commission in failing to bring forth essential parties of Licensee WBTV personnel with whom Petitioner had direct dealings in this matter, namely Mr. Paul Marion and Mr. Wallace Gorgenson both of whom have not supplied sworn statements nor answered direct charges, is also a delaying tactic of the Commission.

Justice demands that a hearing be held in the interest of public convenience and necessity.

Respectfully Submitted

/s/ CANDIS O. RAY,
Petitioner
2700 Connecticut Avenue, N. W.
Washington, D. C. 20008

[CERTIFICATE OF SERVICE]

APPENDICE 6
PAGE 17

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

December 4, 1969

Miss Candis O. Ray
2700 Connecticut Avenue, N. W.
Washington, D. C. 20008

Dear Miss Ray:

This refers to your complaint against Station WBTV, Charlotte, North Carolina dated November 24, 1969. In your complaint you repeat charges that the licensee made misrepresentations to the Commission and maintain that the Commission and the Broadcast Bureau committed two basic errors in its previous handling of the matter.

The first error made by the Commission according to your complaint is that it issued "Two distinct contradictory opinions and rulings 'By Order' of F. C. C. . . ." when, in fact, there was but one Order dated October 25, 1967. Apparently, you are confusing the Order with the subsequent public notices. The second public notice regarding the Order merely corrected the first notice and neither of them was an Order. Thus, your statement that the Commission has issued "contradictory opinions" is without foundation.

The second, alleged error committed by the Commission was that it considered the contractual dispute and not the allegations of deliberate misrepresentations. In numerous letters from the Commission, you have been advised that this Commission, as a matter of policy, does not exercise jurisdiction in questions of contractual right and/or private controversy. Consideration has been given to your allegations of deliberate misrepresentations by the licensee as stated in the Memorandum Opinion and Order of May 25, 1967, the Order of October 27, 1967 and in numerous letters since 1959.

PAGE 18

Miss Candis O. Ray
(Page 2)

In your complaint you present no material that has not been previously considered. A complete review of all aspects of your allegations has been made, and it has been determined that a grant of the application for renewal of license of Station WBTV would serve the public interest, convenience and necessity.

In view of the foregoing and pursuant to Section 0.281(aa) of the Commission's Rules, your "complaint/petition" is dismissed as repetitious.

Sincerely yours,

/s/ Georgs S. Smith
Chief, Broadcast Bureau

cc:
Station WBTV

APPENDICE 7
PAGE 19

CANDIS O. RAY and ASSOCIATES
PUBLIC RELATIONS

2700 Connecticut Avenue, N. E.
Washington, D. C. 20008

November 24, 1969

TO: Mr. Ben F. Waple, Secretary)
Federal Communications Commission)
Washington, D. C. 20554)
) BRCT-55
RE: Jefferson Standard Broadcasting Company)
(WBTV) Charlotte, North Carolina)
)
Renewal Of License, Application filed)
September 2, 1969)

COMPLAINT AGAINST LICENSEE WBTV, CHARLOTTE, NORTH CAROLINA
ON QUESTIONABLE BUSINESS PRACTICES

COMPLAINT FILED IN THE PUBLIC INTEREST AND CONCURRENT
WITH PETITION FOR REHEARING AND RECONSIDERATION
FILED FEBRUARY 27, 1967 with F. C. C.

Comes now Candis O. Ray, individually and as the Candis O. Ray Agency, and petitions the Federal Communications Commission to reconsider Opinion and Ruling of F. C. C. Broadcast Chief in granting WBTV license renewal in Renewal Letter dated January 26, 1967 and for reasons therefor states:

ERRORS OF F. C. C.

TWO DISTINCT CONTRADICTORY OPINIONS AND RULINGS "BY ORDER"
OF F. C. C. NOW EXISTING ON F. C. C. RECORDS IN THIS
COMPLAINT MATTER INVALIDATES BOTH "BY ORDER" RULINGS

1. Reference is made to "Public Notice B-7853 dated October 25, 1967"

released with the following erroneous statement "Her request is based on a breach of contract dispute with WBTV. "By Order."

2. The above Public Notice B-7853 dated October 25, 1967 was changed "By Order" in the same complaint matter and a new Public Notice issued by the F. C. C. December 1, 1967, Public Notice B-9246, wherein the F. C. C. Ruling is based on an entirely different charge than that erroneous and misinterpreted charge ruled on by the F. C. C. Broadcast Chief over the signature of Mr. Ben F. Waple in the F. C. C. Renewal Letter dated January 26, 1967.

a. The changed Public Notice B-9246 dated December 1, 1967 issued "By Order" correctly cites proper complaint charge and contradicts the F. C. C. Ruling in its Letter Renewal of License to WBTV dated January 26, 1967 inasmuch as it is stated therein..... "Her request is grounded on her allegations that the Licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. ("By Order")

b. Attention is directed to the F. C. C. Letter of Licensee Renewal in this same complaint matter dated January 26, 1967 wherein it is stated erroneously that Miss Ray's complaint..... "would only bear on whether a contract existed and not on the alleged misrepresentation."

F. C. C. PREJUDICED PETITIONER, AND IS IN ERROR

Petitioner is fully aware, and was at the time of filing the initial complaint in this matter, that the F. C. C. has no jurisdiction over private controversies and private contract matters. The F. C. C. was properly made aware that this complaint against Licensee WBTV was properly based on the premise of willful and deliberate misrepresentation by Licensee WBTV to the F. C. C. at the outset. The F. C. C. has preferred not to read the charge properly, and to state stronger for WBTV, adding phrases WBTV had not charged, (see Petition For Rehearing and Reconsideration filed February 27, 1967) in F. C. C.'s prejudice in issuing contents of Renewal Letter dated January 26, 1967.

AS EVIDENCED, and because of the existing contradicting Opinions and Orders "By Order" on record at the F. C. C. in this complaint matter before the F. C. C., all Opinions and Orders issued "By Order" are now void and null.

F. C. C. IN ERROR TO CONSIDER THE CONTRACT MATTER

The F. C. C. has no jurisdiction over private controversies, and private contract matters. This complaint was properly filed with the F. C. C. by Petitioner and Counsel because of Questionable Business Practices, as charged, and for the reasons set forth in the Petition, with evidence attached in affidavits and documents supporting charges, and because of false statements sworn to and filed with the F. C. C.

(See Petition For Rehearing and Reconsideration filed February 27, 1967...
(Page 22, top) "If Licensees are to be permitted to lie to the Commission, then the Commissions Act must be further amended to delete any reference to "character" qualifications. (Authorities are listed by counsel).."

F. C. C. ERRONEOUSLY RULED ON CONTRACT MATTER

Premise confirmation of ruling established by Licensee WBTV in its recent letter dated September 2, 1969 to the Commission filed simultaneously with application for license renewal wherein the following quote appears... "1/ The Opposition to the Application..... sets forth the history of Miss Ray's complaints against WBTV..... all of which are premised on an alleged 1952 breach of contract claim. These identical matters were considered by the Commission when it granted renewal application of WBTV....."

WHETHER OR NOT A CONTRACT EVER EXISTED IS NOT THE
COMPLAINT HERE BEFORE THE F. C. C. AGAINST LICENSEE WBTV
DELIBERATE MISREPRESENTATION TO THE F. C. C. IS THE CHARGE,
AS PROPERLY SET FORTH IN THE PETITION FILED FEBRUARY 27, 1967

Although the Formal Petition For Rehearing and Reconsideration was filed properly to go before the Commissioners themselves for evaluation of merit, and to be considered by the Commissioners, appealing the ruling of the Broadcast Chief at great outlay of expense to the Petitioner, full authority was delegated back to the Broadcast Chief allowing impropriety and illegal procedure, evidenced by the following F. C. C. release ORDER dated OCTOBER 25, 1967:

Full content of ORDER:

"1. The Commission has before it an application filed on June 26, 1967 by Candis O. Ray requesting a review of the actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above-entitled application and on May 23, 1967 which denied Miss Ray's Petition requesting reconsideration of that grant.

"2. IT IS ORDERED, That, the Application for review is DENIED."

It is clear that the complete matter has been handled at the Broadcast level of the Federal Communications Commission. The formal Petition was filed, on advice of counsel, to go to the Commissioners themselves, and contract entered on that basis. Petitioner has been blocked by the Commission at the Broadcast level of the F. C. C. in fulfilling that contractual agreement.

F. C. C. condones Licensee WBTM's deliberate evasion to answer charges in Petition. WBTM offered no Point-by-Point rebuttal to serious charges, and further disdained the use of a single affidavit.

The F. C. C. did not question the deliberate evasion by Licensee WBTM.

It will further be noted that Petitioner Ray filed a number of affidavits, including the sworn statement supplied by a prominent Washington attorney, to support her charges, among other clear and concise evidence and proof of charges alleged.

Wherefor, Petitioner requests reconsideration of Ruling effected by the F. C. C. Broadcast Chief in Letter Renewal dated January 26, 1967 in granting license renewal to WBTM, based on errors in ruling explained herein, AND requests a hearing before the Commission to compel, as proper procedure, that Licensee WBTM will comply and answer charges made by Petitioner on file in this complaint matter.

Respectfully submitted,

/s/ CANDIS O. RAY,
Petitioner

FILED NOVEMBER 24, 1969

APPENDICE 8
PAGE 23

CANDIS O. RAY and ASSOCIATES
PUBLIC RELATIONS

127 East 59th Street, New York, New York 1022

September 11, 1969

The Honorable Rosel H. Hyde
Chairman, Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: Licensee WBT
Charlotte, N. C.

Dear Chairman Hyde:

This is to acknowledge receipt of a letter dated September 2, 1969 mailed by Mr. Eagan, above captioned licensee's counsel, in answer to my letter to you dated August 22, 1969 in reference to licensee WBT.

This matter was reported to you, and properly so, as explained in my letter of August 22, 1969, because of the procedural irregularities and errors on record in this complaint matter before the Federal Communications Commission.

It is noted in Mr. Eagan's letter dated September 2, 1969, that he establishes these errors existing on the F. C. C. records by stating the true dates and F. C. C. actions, further pointing up the errors of the F. C. C.:

To wit: Mr. Eagan writes (page 2, para. 2) "see also Public Notice B-7853 dated October 25, 1967 and Public Notice B-9246 dated December 1, 1967."

ERRORS OF FCC

1. It should be noted that the referred to "Public Notice B-7853 dated October 25, 1967" was released with the following erroneous statement "Her request is based on a breach of contract dispute with WBT. (By Order.)"

2. The above Public Notice B-7853 dated October 25, 1967 was changed "By Order" in the same complaint matter and a new Public Notice issued by the F. C. C., as stated by Mr. Eagan, above referred to as Public Notice B-9246 dated December 1, 1967 wherein it is stated a completely different charge than that which the F. C. C. ruled on and granted renewal of license to WBTV in its renewal letter by the Broadcast Department dated January 26, 1967.

A. The changed Public Notice B-9246 dated December 1, 1967 issued "By Order" contradicts the F. C. C. ruling in its letter renewal of license to WBTV dated January 26, 1967 inasmuch as it is stated therein... "Her request is grounded on her allegations that the licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. (By Order.)"

B. Attention is directed to the F. C. C. Letter of License Renewal in this complaint matter dated January 26, 1967 wherein it is stated erroneously that Miss Ray's complaint..... "would only bear on whether a contract existed and not on the alleged misrepresentation."

As evidenced, and because of the contradicting opinions and ORDERS "By Order" on record in the complaint matter before the F. C. C., all Opinions and Orders are void and null.

THE FCC IN ERROR TO CONSIDER THE CONTRACT MATTER

The F. C. C. has no jurisdiction over private contract matters, and has no right to play up the contract matter, as this complaint was properly filed with the F. C. C. on Questionable Business Practices Of the Licensee -- and because of the false statements sworn to and filed with the F. C. C. by the Licensee. Complainant knew and certainly her counsel was aware that the F. C. C. has no jurisdiction over private contracts. This complaint was based properly on Questionable Business Practices of Licensee for the reasons set forth in the Petition, with evidence attached in affidavits and documents.

In this Instance attention is directed to Mr. Eagan's letter dated September 2, 1969, above referred to, (page 2, bottom of page) "1/ The Opposition to the Application.... sets forth the history of Miss Ray's complaints against WBTV..... all of which are premised on an alleged 1952 breach of contract claim. These identical matters were considered by the Commission when it granted renewal applications of WBTV....."

I quote from a letter to me from my counsel, Mr. James A. Gammon, of the Washington law firm Molnar and Gammon, dated March 14, 1967:

"You will note that the opposition omits entirely a point-by-point rebuttal of your petition, and further disdains the use of a single affidavit."

WVTW deliberately avoided all charges. The F.C.C. did not question that, and allowed the evasion.

My counsel, Mr. Gammon was shocked to have received the Memorandum Opinion and Order released by the F.C.C. May 25, 1967 and he wrote to me on May 29, 1967 stating in regard to the Order, "I will be in touch with you about this matter within a week or two after we have had time to research this completely."

My counsel was apparently blocked from researching it completely.

I have only recently learned that the F.C.C. was "letting Mr. Rawson of the Renewal Broadcast level handle it." This is the information which was given to me by counsel, Mr. A. Philip Towsner, who had a conference recently with the principals of the F.C.C.

The similarity of authorship of both letters, the License Renewal letter dated January 26, 1967 and the letter Memorandum Opinion and Order released by F.C.C. May 25, 1967, and the F.C.C. letter written to witness Sam Zurich dated December 9, 1966 demanding an affidavit repeating exactly what he had said to F.C.C.'s Mr. Rawson bears out this fact.

Further evidence that the matter was being handled by Mr. Robert Rawson who was the Chief of the Broadcast Bureau is revealed in the release of the F.C.C.'s ORDER dated OCTOBER 25, 1967 which full content is as follows:

"1. The Commission has before it an application filed on June 26, 1967 by Candis O. Ray requesting a review of the actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above-entitled application and on May 23, 1967 which denied Miss Ray's petition requesting reconsideration of that grant.

"2. IT IS ORDERED, That, the Application for review IS DENIED."

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It is clear that the complete matter has been handled at the Broadcast level of the Federal Communications Commission. I hold a letter from Commissioner Cox stating it had been considered "by the staff."

I offer the following content from the letter of contractual agreement which I entered into with my counsel, Mr. James A. Gammon, and at which time payment was made for his representation.

"Frankly, it does seem to us that your years of effort in seeking redress for what you consider a wrong should at some point be fully and formally presented for final action by the Commissioners themselves.

In accordance with the confirmation of the agreed to meeting with F. C. C. officials referred to in my letter to you dated August 22, 1969, I will expect same in an effort to straighten out the now existing discrepancies on the F. C. C. records, and to rightfully place this complaint matter in proper order.

Respectfully yours,

/s/ CANDIS O. RAY

cc: R. Russell Eagan, Esquire
James A. Gammon, Esquire

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

FCC 67-1173
6584

In re Application of)
JEFFERSON STANDARD BROADCASTING)
COMPANY)
Charlotte, North Carolina) FILE NO. BRCT-55
For Renewal of License of)
Station WBTV)

ORDER

Adopted: October 25, 1967 Released: October 27, 1967
By the Commission: Commissioner Bartley absent.

1. The Commission has before it an application filed on June 26, 1967 by Candis O. Ray requesting a review of the actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above-entitled application and on May 23, 1967 which denied Miss Ray's petition requesting reconsideration of that grant.
2. IT IS ORDERED, That, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

APPENDICE 10
PAGE 28

July 15, 1961

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C.

Re: Licensee WBTM,
Charlotte, N. C.

Dear Mr. Waple:

Although the Commission did not advise me of the answer which licensee WBTM filed with reference to the herein complaint matter and my protest of license grant, and having granted the license renewal without notifying me, the complainant, I have nevertheless reviewed WBTM's answer filed March 9, 1961, after being forced to employ a lawyer to compel the F. C. C. to allow me to read the answer in the public reference room, and to make available to me the same.

I am attaching herewith a copy of the itemized false statements sworn under oath and filed with its answer on March 9, 1961 by licensee WBTM in a deceptive move to effect renewal of its license.

Respectfully,

/s/ CANDIS O. RAY

APPENDICE 11
PAGE 29

CANDIS O. RAY AGENCY -- Radio/TV & Pub. Rel.
1500 Massachusetts Avenue, N. W.
Washington 5, D. C.

June 3, 1961

F. C. C. :

I have read and examined the Answer the licensee WBT & WBTV of Charlotte, N. C. has made to my Complaint before the Commission in the Public Reference Room of the Commission by permission given me by letter to do so, for which I thank the Commission.

I must ask that the Commission review the case because of false statements sworn to under oath by the licensee's legal counsel and others submitting affidavits in the Answer, and offer herewith and attached the personal affidavits of the two attorneys who handled both cases - the WBTV suit and the Travis-Furniture-Forged Note Case, and who represented me in both cases: Mr. Joseph Evans, attorney representing me in the Jefferson Standard Broadcasting Company (WBTV) case and a member of the law firm, Thomas & Evans of Hickory, North Carolina, Affiant "A", and Mr. L. H. Wall, the attorney representing me in the Travis-Furniture Case, of Lenoir, North Carolina, Affiant "B" who point out in their sworn statements of facts and of court actions that I was as their client deprived and denied my legal rights in these two cases, which are connected in that the office furniture which I had bought and paid for on direction and authority of the licensee WBTV's General Manager in order to open up office in Charlotte to fullfill my contractual agreement with the licensee was illegally seized and sold by a Federal Government Official who did not have a court order to sell the property, and before a court judgment was given to him to sell the property (See Affiant "B". Also EXHIBIT "D" which the licensee has submitted to the Commission in their Answer.), and the WBTV counsel made this particular office furniture a part of the court record by including it in his cross examination of me in the first suit against WBTV in Mecklenburg County when he asked me about the furniture and inquired "And where is that furniture now?" The furniture had been confiscated and illegally sold, and AFTER the sale there was a trial held in Charlotte Superior Court (See Affiant "B") and I was not made a party to the trial or the suit, and knew nothing about it. I answered him by saying it was in litigation. His response was a giggle. It was confusing to me at that time(January 27, 1955) because I did not know that there had been a trial in January in the Superior Court of Mecklenburg County on the furniture, and this action after Travis had already sold my furniture. I attach herewith Exhibit "A" which itemizes the

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furniture in question and made a part of the licensee WBTV's suit and clearly discussed in the testimony I gave under cross examination by the counsel for the licensee, which testimony has been concealed from me and my attorneys by the counsel of the licensee. (See attached Affiant "A", my attorney handling this case at the time.)

/s/ Candis O. Ray

APPENDICE 12

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

May 17, 1961

In reply refer to:
8421

Miss Candis O. Ray
1500 Massachusetts Avenue, N. W.
Washington 5, D. C.

Dear Madam:

This is with reference to (1) the applications (BR-458 & BRCT-55) of Jefferson Standard Broadcasting Company for renewal of licenses of Stations WBT and WBTV, Charlotte, North Carolina; (2) your letter and enclosures filed on December 8, 1960 objecting to the grant of the above-entitled applications; (3) the reply of the licensee filed on March 9, 1961; and (4) other letters, affidavits and materials filed in the matter by the principals.

In substance, your letter urges that the licensee's failure to honor an alleged contract with you involving the production of certain television shows is a willful breach of contract and reflects adversely on the character of the licensee; that in legal suits brought against the licensee in the North Carolina courts, you did not prevail because of alleged collusion between the attorneys involved including your own counsel, alleged improper influence on the part of the licensee's North Carolina counsel and alleged corruption in the North Carolina courts. In addition, you alleged that you were denied due process

because you were not given a jury trial. The reply filed by counsel for the licensee disputes the above contentions and the affidavits submitted by the licensee categorically deny the allegations.

The Commission has consistently taken the position that, with respect to private controversies, such as is referred to above, it will not attempt to resolve the issues therein but will leave their resolution to the appropriate courts pursuant to local law. In this connection, it appears that your claims have been litigated in the courts of North Carolina and have been adjudicated in favor of the licensee.

In light of the above, and upon a finding that the public interest will be served thereby, the Commission on May 17, 1961 denied your request for a hearing and granted the above applications for renewal of licenses of Stations WBT and WBTV. In accordance with your request, the newspaper clippings which you submitted to the Commission are returned herewith.

BY DIRECTION OF THE COMMISSION

Ben F. Waple
Acting Secretary

Enclosure

cc: Kirkland, Ellis, Hodson,
Chaffetz and Masters

BRIEF FOR APPELLEE

United States Court of Appeals
for the District of Columbia Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT AUG 24 1970

No. 24,027

John H. Conlin
Counsel

CANDIS O. RAY,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee;
JEFFERSON STANDARD BROADCASTING COMPANY
Intervenor.

ON APPEAL FROM A MEMORANDUM OPINION AND ORDER
OF THE FEDERAL COMMUNICATIONS COMMISSION

JOHN H. CONLIN,
Associate General Counsel.

JOSEPH A. MARINO,
Counsel.

Federal Communications Commission
Washington, D. C. 20554



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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,027

CANDIS O. RAY,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

JEFFERSON STANDARD BROADCASTING COMPANY,
Intervenor.

ON APPEAL FROM A MEMORANDUM OPINION AND ORDER
OF THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR APPELLEE

STATEMENT OF QUESTIONS PRESENTED */

1. Did the Commission err in concluding that appellant Ray's complaint filed in 1969 had been previously resolved in a Commission order which became final in 1967 so that both the need for administrative finality and 47 U.S.C. 405 precluded further consideration of the matter.
2. Assuming the Commission's 1967 determination is properly before the Court, could the Commission reasonably find that appellant's complaint did not warrant an evidentiary hearing under Section 309(d) of the Communications Act.

*/ This case has not previously been before this Court.

COUNTERSTATEMENT OF THE CASE

Candis O. Ray appeals from a Memorandum Opinion and Order released by the Federal Communications Commission on February 16, 1970 (Appendix A, hereto).^{1/} Section 402(b)(6) of the Communications Act, 47 U.S.C. 402(b)(6), confers exclusive jurisdiction upon this Court to review the Commission's order which is related to an application seeking renewal of television station WBTV, Charlotte, North Carolina.

In the Memorandum Opinion and Order under review, (App. A) the Commission affirmed the Chief, Broadcast Bureau, who had dismissed Miss Ray's complaint against WBTV. It noted that her controversy with television station WBTV had been in existence "for almost two decades", and that "[h]er allegation that the licensee misrepresented material facts to the Commission has previously been thoroughly reviewed by the Commission, as evidenced by our numerous letters to Miss Ray and our Order of October 27, 1967." Miss Ray's most recent pleading, the Commission found, "adds nothing of substance that has not already been the subject of our careful consideration." Thus, she was merely seeking reconsideration of the prior Commission order which became final in 1967. The Commission concluded that a need existed for administrative finality. It

^{1/} Appellant did not serve a designation of the parts of the record which would be included in the Appendix as required by Rule 30(b) of the Federal Rules of Appellate Procedure. She did not request that the filing of the Appendix be deferred pursuant to Rule 30(c) or be waived; instead she attached to her brief selected portions of the record which are labeled "Appendix." Appellant's Appendix is fragmentary and does not contain many of the relevant Commission documents. We are therefore attaching those documents to our brief. The Record filed April 16, 1970, will be cited as "R," and the Supplemental Record filed May 28, 1970, as "SR."

also observed that the thrust of Section 405 precluded further
2/
consideration of her complaint.

As the Commission indicated, this controversy has a long history. It began in 1952 when WBTv allegedly breached a contract with Miss Ray involving the production of a television program entitled "Let's Cook Quick." After she had unsuccessfully litigated the matter in North Carolina courts, Miss Ray turned to the Commission with the complaint filed December 8, 1960 (Supplemental Record 1-21). Based on her allegation of a breach of contract she claimed that renewal of WBTv's license would not serve the public interest because of business practices and actions which reflected adversely on WBTv's character qualifications (S.R. 21). She also alleged that "because of the corruption in the courts of Charlotte, N. C., and influenced by the licensee's attorney and management" she has been deprived of a trial by jury (S.R. 15).

WBTv filed a lengthy reply (SR. 23-145). It attached the affidavits of Charles Crutchfield, the station's manager,

2/ Section 405 of the Communications Act, 47 U.S.C. §405, provides in part that "a petition for rehearing must be filed within 30 days from the date upon which public notice is given of the order . . . complained of."

(S.R. 134-141), and Kenneth J. Tredwell the program operation manager (S.R. 131-133) who allegedly had been parties to the contract. Both denied that there was any contractual relationship between Miss Ray and station WBTv. An affidavit from WBTv's local attorney summarized the history of the state court litigation (S.R. 119-124), attached copies of pleadings and court judgements (S.R. 23-113) and denied that "there is any corruption in the Courts in Charlotte or elsewhere or that I have in any way attempted to influence any Judge in any matters other than to try to present a client's cause to the best of my ability. I in no way attempted to influence Miss Ray's attorneys." (S.R. 120).

On May 17, 1961, the Commission renewed WBTv's license (Appendix B, hereto). It noted that "affidavits submitted by counsel categorically deny" Miss Ray's allegations for breach of contract, collusion, and alleged corruption in the North Carolina courts. The Commission also observed that it had traditionally taken the position that private contractual disputes should be resolved by local state courts.

Miss Ray renewed her complaint on July 15, 1961, and March 5, 1962, asking the Commission "to examine the false statements sworn under oath by the licensee, its attorney and the others submitting affidavits" and to report its findings to the Justice

Department (S.R. 147a-173). Similar charges were made in letters to the Justice Department (S.R. 279). Thereafter, on November 29, 1963, WBTM's license was renewed.

A new series of complaints was initiated on January 25, 1965, when Miss Ray wrote to the Commission that WBTM had "withheld" statements by its employees in responding to her 1960 complaint (S.R. 181-184, 188-190, 191-205, 227-228).

These statements would allegedly "prove the definite existence of a contract between the Candis O. Ray Agency and WBTM for the production of 'Let's Cook Quick . . .' " (S.R. 189).

Reliance was placed on several letters written to Miss Ray by Mr. Samuel C. Zurich, a former employee of WBTM, which appeared to indicate that he had given a written statement to WBTM which was not submitted to the Commission (S.R. 189). In response to a Commission inquiry (S.R. 176) WBTM again filed a lengthy response (S.R. 177-179, 206-226, R. 173-176). On January 26, 1967, the Secretary of the Commission summarized the result of the Broadcast Bureau's inquiry (R. 122a-122f, Appendix C, hereto) and concluded that:

On the basis of all the information which we have obtained, we see no evidence which indicates that WBTM misrepresented the facts to the Commission when it denied that it had written statements from employees other than

those which had been previously furnished. In denying the existence of written statements, it is now obvious that WBTV did not consider as "statements" the notes its counsel had taken of oral interviews of employees because, as would be the case of "statements" in the technical legal sense, the interviews were not reduced to narrative form and submitted to the interviewees for their correction and signature. (R. 122(e), App. C).

WBTV's license was renewed on January 26, 1967.

Reconsideration was sought by Miss Ray, who at this point was represented by a District of Columbia law firm specializing in communications (R. 123-178), and responsive pleadings were filed (R. 179-218, 219-229). By Memorandum Opinion and Order (Appendix D, hereto) pursuant to delegated authority, 47 CFR 0.281, the Chief, Broadcast Bureau affirmed renewal of WBTV's license.

An application for review was then filed on Miss Ray's behalf with the full Commission (R. 232-248, 251-274, 276-302). By Order released October 27, 1967 (Appendix E, hereto) the Commission en banc denied the application for review. That Order was not appealed to this Court within the time provided by the applicable statute. 47 U.S.C. 402(c).

Miss Ray did personally write to Commissioner Cox complaining that a public notice (Appendix F, hereto) announcing the Commission's action on her application for review was misleading since it failed to indicate that she had charged WBTV with

misrepresentations. Commissioner Cox arranged for a corrected public notice to be issued by the public information officer (S.R. 250-254) (Appendix G). Responding to a subsequent inquiry Commissioner Cox in a letter dated December 20, 1967 explained to Miss Ray that:

With respect to the Commission's Order denying review (FCC 67-1173), it is normal Commission policy to issue such denials without statement of the reasons therefor, in the interests of administrative efficiency. However, the matters of concern to you were considered by the Commission in making the determination. The staff's representations were considered, and I added some information based on my personal familiarity with the file. I feel that the matter was given full and considered treatment by the Commission.

With respect to a further statement by Mr. Zurich, I think he has clarified his statements as much as possible. It seems clear that his references to a "statement on file" with WBTW related not to any written statement, prepared or signed by him, but rather to the fact that he had been interviewed during the law suit and thought that notes had been taken. Accordingly, I do not think it would serve any useful purpose to ask him to submit a further statement. (Appendix H)

Later, Miss Ray also wrote to Senator Philip A. Hart complaining about the Commission's action (S.R. 274-276). Responding to Senator Hart's inquiry, Chairman Hyde indicated, among other things, that Miss Ray's complaints had received careful consideration over many years, that she had "written some 40 letters and two telegrams to the Commission, at least four letters to the Department of Justice and she has also written to the Attorney

General of the United States and to the President." Chairman Hyde concluded that "in the interest of administrative finality the matter is considered [by the Commission to be] closed." (Appendix I, hereto).

When WBTB filed for license renewal in 1969, Miss Ray sought reconsideration of the Commission's Order of October 27, 1967, and a hearing on her complaint (Appellant's Appendix 7). Pursuant to delegated authority, 47 CFR 0.281(aa), the Chief, Broadcast Bureau, dismissed this complaint as repetitious (Appendix J, hereto). As noted at the outset, by Memorandum Opinion and Order released February 16, 1970, (App. A) the Commission affirmed the Bureau's dismissal of Miss Ray's complaint. This appeal followed.

ARGUMENT

Appellant's brief, as we understand it, argues the following three points: that a hearing should have been ordered on WBTV's application for renewal of license because Commission rulings between 1961 and 1967 disregarded conflicting and contradictory affidavits in the record before the agency (Br. pp. 8-10, 12); that a modification in the public notice which accompanied the Commission's action of October 27, 1967 granting WBTV's 1967 license application nullified that action (Br. pp. 10-13); and that the Commission's delegation of authority to the Chief of the Broadcast Bureau to dismiss repetitious pleadings is illegal and prejudicial (Br. p. 13). Appellant requests that the case be remanded for an evidentiary hearing "for purposes of clarifying conflicting sworn statements." (Br. p. 14). We will show that these contentions are not properly before the Court at this time and that they are in any event without merit.

I. IN ESSENCE APPELLANT SEEKS REVIEW OF A COMMISSION ACTION TAKEN IN 1967 THAT HAS LONG SINCE BECOME FINAL.

Appellant's arguments stem essentially from the Commission's resolution of a dispute that had been before the agency intermittently over a period of many years and

which was finally resolved in 1967 with an order upholding the ruling of the Chief of the Broadcast Bureau that the complaint filed by Miss Ray against Station WBTV did not warrant an evidentiary hearing. This order was released on October 27, 1967 and became final thirty days later when no appeal was filed.^{3/} Appellant's contentions (Br. pp. 8-9, 12) that material before the Commission at that time justified an evidentiary hearing and that modifications in the public notice announcing the Commission's action somehow vitiates that action come too late to be considered now. See American Federation of Musicians v. F.C.C., 123 U.S. App. D.C. 74, 79, 356 F.2d 827, 832 (1966).

"Orderliness, expedition, and finality in the adjudicating process are appropriate weights in the scale, as reflecting a public policy which has authentic claims of its own." Valley Telecasting Co. v. F.C.C., 118 U.S. App. D.C. 410, 413, 336 F.2d 914, 917 (1964). This policy is reflected in Section 402(c) of the Communications Act which requires that an appeal to this Court from a Commission broadcast licensing action "shall be taken" within 30 days of the action (47 U.S.C. 402(c)), and Section 405, which

^{3/} On that occasion Miss Ray was represented before the Commission by an experienced communications law firm and the issues were fully litigated on her behalf. (R. 123-178, 179-218, 219-229, 232-248, 251-274, 276-302).

requires that a petition seeking reconsideration of a Commission action "must be filed" within 30 days of the Commission action. 47 U.S.C. 405. Here since Miss Ray's complaint against WBTv had been resolved three years before in 1967 when the station's license was last renewed, the Commission could properly conclude that both the need for administrative finality and the specific requirement of Section 405 precluded further consideration. Since nothing was set forth in her pleading^{4/} that had not already been thoroughly considered in connection with earlier licensing action, this was plainly a reasonable determination. American Federation of Musicians v. F.C.C., supra.

II. THE COMMISSION DID CONSIDER APPELLANT'S MISREPRESENTATION ISSUE, AND IT ACTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMMUNICATIONS ACT WHEN IT RENEWED WBTV'S LICENSE IN 1967.

In essence appellant alleges that the Commission failed to secure statements from the employees of WBTv with whom Miss Ray had "direct dealings" in the contract dispute matter, and subsequently failed to investigate conflicting statements on file with the Commission (Br. pp. 8-9, 12). The record reveals, however, that affidavits and statements were

4/ See appellant's Appendix 7.

filed with the Commission by Mr. Crutchfield, the station manager (S.R. 134-141, R. 212-213, 268-270, 301), and Mr. Tredwell, the program operation manager (S.R. 131-133), who had allegedly been involved in the breach of contract and who had been sued in the state courts by Miss Ray.

The Commission also investigated appellant's later claim that WBTV had concealed or failed to disclose other written statements given by its employees. Since appellant had relied on letters written to her by Samuel C. Zurich, a former WBTV employee, two statements were secured from Mr. Zurich in 1965 and 1966 (R. 146-147, 171-172). He was also interviewed by telephone by Mr. Rawson, Chief of the Broadcast Bureau's Renewal and Transfer Division (R. 146). As a result of these investigations, both the Commission and its staff (App. C, D, E) were satisfied that WBTV had not made misrepresentations when it denied possession of any written statements other than those which had already been submitted to the Commission.

Section 309(d) and (e) of the Communications Act, 47 U.S.C. 309(d) and (e), requires that an evidentiary hearing be held if "a substantial and material question of fact" is presented, or if the Commission is unable to find that a grant of an application would serve the public interest. In this

case the agency after reviewing the materials before it concluded that an evidentiary hearing on WBTV's renewal application was not required. This Court has held that "[c]ontradictory allegations and affidavits which create some possibly unresolved factual issue do not invariably necessitate an evidentiary hearing" where the Commission's detailed analysis of the data before it supports the conclusion that a hearing is not required.

Broadcast Enterprises, Inc. v. F.C.C., 124 U.S. App. D.C. 68,
5/
70, 390 F.2d 483, 485 (1968). Here appellant does not question the Commission's analysis of the data before it; instead she argues that the Commission's renewal of WBTV license in 1967 was based on an "evaluation of the contract matter 'and not on the issue of the alleged misrepresentation'" (Br. p. 10). She relies on part of a sentence from a six-page letter ruling dated January 26, 1967. However, that letter, which is attached this brief (App. C), reveals that specific attention was given to the contention that WBTV's principals had made misrepresentation to the Commission in responding to Miss Ray's complaint. Similarly, the Memorandum Opinion and Order released May 27, 1967 (App. D), reveals that the misrepresentation claim was

5/ See also WLIL, Inc. v. F.C.C., 122 U.S. App. D.C. 246, 249, 352 F.2d 722 (1965) where the Commission had considered the allegations in some detail before finding them to be without force; Stanley Marsh III, et al. v. F.C.C., Case No. 23,234, decided August 7, 1970, Slip Opinion pp. 6-9, where this Court observed that "[o]nly where the public interest cannot be determined without a resolution of disputed facts has Congress dictated that the Commission must conduct a hearing."

again considered. The record also reveals that in 1967 the misrepresentation issue was fully explored in pleadings filed by counsel for Miss Ray and WBTV (R. 123-178, 179-218, 219-229 232-248, 251-274, 276-302). Thus there is no substance to the claim that the misrepresentation issue was not considered when WBTV's license was renewed in 1967.

Nor is there merit to appellant's claim that the Commission's Order of October 27, 1967, was somehow "nullifie[d]" and made "invalid" because the Commission changed the basis for its ruling (Br. pp. 10-11). The record reveals that the Commission's Order released October 27, 1967 (App. E) was never changed. Appellant erroneously relies on a public notice released October 25, 1967, by the Commission's Information Office, 47 CFR 0.61, announcing that the Commission had denied Miss Ray's application for review. That notice reported: "Her request is based on a breach of contract dispute with WBTV." (App. F). On December 1, 1967, the public notice was corrected, after appellant had complained to Commissioner Cox, to reflect that:

Her request is grounded on her allegations that the licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. (App. G)

Thus appellant has confused the Commission's Order adopted October 25 and released October 27, 1967 (App. E) with the subsequent public notice (App. F). The second public notice (App. G) merely corrected the first, but neither of these notices was the Commission Order. Moreover, insofar as the Commission Order is concerned, the record reveals that on December 20, 1967, Commissioner Cox, in responding to still another complaint by Miss Ray, explained to her that it is the Commission's normal practice to issue orders denying review "without statement of the reasons therefor, in the interest of administrative efficiency" (App. H). This practice was authorized by Congress in 1961 when it amended the Communications Act to relieve the Commission of the burden of utilizing its time on routine legal and factual matters so that it could concentrate on important policy questions.^{6/} Commissioner Cox also assured Miss Ray that the matters which concerned her had been considered by the Commission in making its determination and that he had added some information based upon his

^{6/} Public Law 87-192, approved August 31, 1961, 75 Stat. 420, 47 U.S.C. 155(d); House Report No. 723, 87th Cong., 1st Sess., p. 1; S. Report No. 576, 87th Cong., 1st Sess., p. 5; and Report and Order, 27 Fed. Reg. 5671 (1962).

Congress specifically provided that the Commission could deny an application for review "without specifying any reasons therefor", 47 U.S.C. 155(d)(5); an action taken pursuant to delegated authority would then have the same force and effect as a Commission action, 47 U.S.C. 155(d)(3), and be subject to judicial review, 47 U.S.C. 155(d)(7). As previously noted, the actions of the Commission's staff (App. C and App. D) reveal that the misrepresentation issue was fully explored in 1967.

personal familiarity with the case, and that no useful purpose would be served by asking Mr. Zurich to file an additional statement since it now was clear that Zurich's references to the statement on file with WBTV related not to any written statement prepared or signed by him but rather to the fact that he had been interviewed during the lawsuit and that notes had been taken (App. H).

Accordingly, it is clear from a review of the record that when the Commission acted on WBTV's license renewal in 1967, it gave full consideration to appellant's allegation that WBTV had made misrepresentations to the Commission, and that the Commission never changed the basis for its October 27, 1967 Order.

Finally, appellant challenges the legality of the manner in which her complaint was processed by the Commission. As already indicated, long after the Commission's Order of October 27, 1967, had become final, appellant on November 24, 1969, filed a complaint and petition seeking reconsideration of WBTV's 1967 renewal (Appellant's Appendix 7). The Chief, Broadcast Bureau, pursuant to authority delegated in 47 CFR 0.281(aa) dismissed this pleading as repetitious (App. J). That action, according to appellant, was taken pursuant to a delegation of authority which was illegal and prejudicial (Br. p. 13). No specific prejudice is identified; and in fact, the full Commission acted on her request seeking review of

- 17 -

the Bureau's action as contemplated by 47 U.S.C. 155(d)(4) (App. A). Nor is it suggested why 47 CFR 0.281(aa) under which the Chief of the Broadcast Bureau acted, is illegal. The contrary is clearly the case. See 31 Fed. Reg. 3074; 47 U.S.C. 154(i), (j); 155(d)(1); 303(r).

CONCLUSION

Accordingly, the Commission's Memorandum Opinion and Order released February 16, 1970, should be affirmed.

Respectfully submitted,

JOHN H. CONLIN,
Associated General Counsel,

JOSEPH A. MARINO,
Counsel.

Federal Communications Commission
Washington, D. C. 20554

August 24, 1970



APPENDIX A

[R 527]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 70-149
43304

In re Application of)
JEFFERSON STANDARD BROADCASTING COMPANY) File No. BRCT-55
Charlotte, North Carolina)
For Renewal of License of)
Station WBTV)

MEMORANDUM OPINION AND ORDER

Adopted: February 11, 1970 Released: February 16, 1970

By the Commission:

1. On December 22, 1969, Miss Candis O. Ray filed an Application for Review directed against the actions of the Chief, Broadcast Bureau, in granting the above-entitled application and dismissing her complaint of November 24, 1969 as repetitious. This application for review is opposed by Jefferson Standard Broadcasting Company. The Commission has considered Miss Ray's allegations against this licensee for the past four renewal periods.

2. This controversy between Miss Ray and the licensee has been in existence for almost two decades. Her allegation that the licensee misrepresented material facts to the Commission has previously been thoroughly reviewed by the Commission, as evidenced by our numerous letters to Miss Ray and our Order of October 27, 1967. The presentation in the Application for Review on the question of misrepresentation adds nothing of substance that has not already been the subject of our careful consideration. We could thus simply state that we adhere to our prior determination on the matter, and for the reasons previously stated. There is, however, a further point. Since this matter has been considered before, Miss Ray is essentially asking for a reconsideration of the Order which became final in 1967. There is clearly a need for administrative finality. Indeed, we believe that the Commission is precluded from the consideration of the matter by the thrust of Section 405 of the Communications Act of 1934, as amended. Newforte, Incorporated, 1 FCC 2d 949 (1965).

3. In view of the foregoing, the Chief, Broadcast Bureau, acted properly in dismissing Miss Ray's complaint.

4. Accordingly, IT IS ORDERED, That the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary



APPENDIX B

[SR 147]

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.
May 17, 1961

4048

IN REPLY REFER TO:

8421

Miss Candis O. Ray
1500 Massachusetts Avenue, N. W.
Washington 5, D. C.

Dear Madam:

This is with reference to (1) the applications (BR-458 & BRCT-55) of Jefferson Standard Broadcasting Company for renewal of licenses of Stations WBT and WBTV, Charlotte, North Carolina; (2) your letter and enclosures filed on December 8, 1960 objecting to the grant of the above-entitled applications; (3) the reply of the licensee filed on March 9, 1961; and (4) other letters, affidavits and materials filed in the matter by the principals.

In substance, your letter urges that the licensee's failure to honor an alleged contract with you involving the production of certain television shows is a wilful breach of contract and reflects adversely on the character of the licensee; that in legal suits brought against the licensee in the North Carolina courts, you did not prevail because of alleged collusion between the attorneys involved including your own counsel, alleged improper influence on the part of the licensee's North Carolina counsel and alleged corruption in the North Carolina courts. In addition, you alleged that you were denied due process because you were not given a jury trial. The reply filed by counsel for the licensee disputes the above contentions and the affidavits submitted by the licensee categorically deny the allegations.

The Commission has consistently taken the position that, with respect to private controversies, such as is referred to above, it will not attempt to resolve the issues therein but will leave their resolution to the appropriate courts pursuant to local law. In this connection, it appears that your claims have been litigated in the courts of North Carolina and have been adjudicated in favor of the licensee.

In light of the above, and upon a finding that the public interest will be served thereby, the Commission on May 17, 1961 denied your request for a hearing and granted the

[SR 146]

Miss Candis O. Ray

- 2 -

above applications for renewal of licenses of Stations WBT and WBTV. In accordance with your request, the newspaper clippings which you submitted to the Commission are returned herewith.

BY DIRECTION OF THE COMMISSION

Ben F. Waple
Acting Secretary

Enclosure

cc: Kirkland, Ellis, Hodson,
Chaffetz and Masters

APPENDIX C

[R 122 A]

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

January 26, 1967

Candis O. Ray Agency
1545 - 18th Street, N. W.
Washington, D. C. 20036

IN REPLY REFER TO:

8422

Dear Miss Ray:

This refers to your complaint of September 9, 1966, and subsequent letters pertaining to this matter. You claim that the licensee, in response to your 1960 protest against its license renewal, failed to submit to the Commission certain written statements of its employees regarding the existence of a 1952 contract between you and WBTV for the production of a program, "Let's Cook Quick", and made misrepresentations to the Commission when it denied, in its letter of March 8, 1965, possession of such written statements. You ask the Commission not to grant WBTV's renewal application and request that we require WBTV to ". . . submit all statements it has in its file concerning the contract negotiations and the production of the 'Let's Cook Quick' shows which were filed with Jefferson Standard Broadcasting Company. . . ."

We note that much of the material you submitted with your latest complaint again raises the question of whether you had a contract with the licensee of WBTV in 1952. That matter has been unsuccessfully litigated by you in the North Carolina Courts and cannot be part of our consideration of your current complaint. We are now only considering the question of whether or not principals of WBTV lacked candor in denying the existence of written statements furnished by station employees other than those submitted with its response to your 1960 protest of its renewal application.

A background of this matter follows. On January 25, 1965, you charged that WBTV had in its possession written statements from its staff members which would show that the licensee made "untrue statements" to the Commission in its March 9, 1961 response to your December 8, 1960 protest of its license renewal. Pursuant to our usual practice, WBTV was asked to submit its comments on these charges. By letter dated March 8, 1965, WBTV denied that it had any such written statements except for two affidavits which had previously been submitted and one "personally typed, undated and unsigned, statement" by a former staff member, a copy of which the licensee then enclosed. A copy of WBTV's March 8, 1965 letter was furnished to you on March 12, 1965.



- 3 -

response thereto you stated that you would file a protest against a grant of WBTV's renewal application in 1966 "...citing the newly discovered evidence..." in your possession.

Turning now to your current complaint against WBTV's pending renewal application, it is noted that again you contend that the licensee made misrepresentations to the Commission in denying possession of written statements. You urge that new evidence together with the Zurich letters substantiate your charge. Your new evidence consists of the following statement which you claim Mr. Zurich made to you in a telephone conversation on March 24, 1964:

"WBTV refused to send me a copy of my statement to you. They said you'd have to go through regular channels, however, they read my statement to me on the telephone and there was no mention of contract in my statement."

In again reviewing this entire matter it appeared that Mr. Zurich's prior statements to you were inconsistent with his letter to the Commission of April 2, 1965, in which he denied that he had ever given WBTV a written statement. On the basis of our further analysis, we agree that from a reading of the Zurich letters and what you characterized as new evidence, you were justified in believing that WBTV had in its possession a written statement of Zurich. Accordingly, a second letter was sent to Mr. Zurich on December 9, 1966, asking him to explain his strong and repeated indications in his letters to you as to the existence of a written statement and to set forth to the best of his recollection the details of the telephone conversations he had with Mr. Jorgenson and you in the early part of 1964. Copies of your current filings were also submitted to WBTV.

We now have a response from Mr. Zurich, dated December 14, 1966, an additional statement from WBTV, dated December 24, 1966 (copies of which have been furnished you) and your reply thereto dated January 6, 1967. In his latest letter, Zurich again denies that he gave WBTV a written statement - stating that all references which he made to "a statement" in his correspondence with you were in connection with his oral and informal account of his experience with you and your program, which he gave to Mr. Crutchfield and Mr. Miller. He also denies your allegations that he informed you by telephone on March 24, 1964 that WBTV read his statement to him over the telephone. Rather, he states that he merely informed you of his telephone conversation with Mr. Jorgenson during which they reviewed "...the part of the meeting in Mr. Crutchfield's office which related to my involvement in this case."

- 4 -

WBTV, in its statement, made it clear that it did interview a number of station personnel in connection with the "Let's Cook Quick" program and that during the interview their attorney, Mr. Miller, did take notes of the interviews in connection with the then pending litigation of your suit against WBTV for breach of contract. They emphasized, however, that, while Mr. Zurich was interviewed, no written notes were made of his interview. Additionally, they state that the notes of the other interviews taken by Mr. Miller were neither converted to a written statement nor shown for the purpose of accuracy to those interviewed and were therefore not regarded by the station or its counsel as "statements", as that term is commonly understood by lawyers.

In your letter of January 6, 1967, you question WBTV's assertion that Mr. Miller did take notes at the meeting in question, but not as to what was said by Mr. Zurich. You contend that this is at variance with Mr. Zurich's admission that notes were taken during this meeting. We do not see any conflict in these statements. Since Mr. Miller was taking notes at the meeting, Mr. Zurich, at the time of his correspondence with you, obviously assumed that his oral presentation would be to some degree reflected in these notes. Presumably, Mr. Miller, an attorney preparing for trial, made notes when the individual being interviewed said something that was deemed relevant to the case. Apparently he did not believe that the information given by Mr. Zurich would be useful for that purpose.

In support of your contention that these "notes" were reduced to writing in the form of a "statement", you refer to Mr. Zurich's previous reference to his statement as "being currently filed" with WBTV. However, his references to his statement as being "currently filed" or "registered" were made in letters to you which he wrote at a time when (as we point out above) he obviously believed that what he said would be reflected in Mr. Miller's notes. He has since repeatedly stated that he never saw any written account of his oral presentation. You, of course, have no direct knowledge as to the existence of such a written account. Persons who might have known of such a written statement (Messrs. Crutchfield, Jorgenson, McCleneghan and Miller) have now denied any such knowledge. In these circumstances we conclude that no substantial question exists as to whether WBTV made misrepresentations in denying that it had anything which it classified as statements taken from its employees in regard to your dispute with the licensee of the station.

You further submit that these general "notes" taken during the interviews, which admittedly exist, do represent Mr. Zurich's and other staff members' "statements" and you ask: (1) Whether WBTV has

- 5 -

the right to "conceal" these notes from the FCC, in connection with your pending complaint? and (2) Whether WBTV had the right to withhold these "notes" when it responded to your 1960 protest of its renewal application?

First of all, WBTV has not "concealed" these "notes" from the Commission. They never denied the existence of these notes. They merely did not regard these notes - which were neither signed by, nor shown to, the persons interviewed - as "written statements" in the legal or ordinary sense of the term. Moreover, as is noted above, the only question properly raised by your present complaint is whether WBTV was guilty of misrepresentation in denying possession of a written statement by Mr. Zurich. Thus, even if we assume (and we have no reason to so believe) that Mr. Zurich did say something relevant to your dispute with WBTV and it was in these notes, it would only bear on whether a contract existed and not on the issue of alleged misrepresentation.

With regard to your second question, WBTV in responding to your 1960 protest of its renewal application certainly was not obligated to furnish the Commission with these notes. These notes are the work product of their attorney concerning a matter not directly related to the Commission's business, and the withholding of them in 1961, or even now, is not regarded by the Commission as evidence of bad faith.

On the basis of all the information which we have obtained, we see no evidence which indicates that WBTV misrepresented the facts to the Commission when it denied that it had written statements from employees other than those which had been previously furnished. In denying the existence of written statements, it is now obvious that WBTV did not consider as "statements" the notes its counsel had taken of oral interviews of employees because, as would be the case of "statements" in the technical legal sense, the interviews were not reduced to narrative form and submitted to the interviewees for their correction and signature.

It is indeed unfortunate that you have been put to so much trouble which appears, from the explanations of WBTV's management, its counsel, and Mr. Zurich, to have resulted from lack of clarity in Mr. Zurich's letters to you. While we have felt that these letters did appear to indicate the existence of written statements, we now feel that the matter has been satisfactorily explained. This conclusion was reached only after a careful study and review of all the material furnished by you since January, 1965, including your latest filing on January 20, 1967.

- 6 -

In view of the foregoing, we see no reason to further delay our action on WBTM's renewal application. Accordingly, upon a finding that the public interest, convenience and necessity will be served, we have this day renewed WBTM's license for a regular term.

Very truly yours,

(signed)

Ben F. Waple
Secretary

cc:
WBTM
Russell R. Eagan, Esq.

APPENDIX D

0930

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

In re Application of)
)
JEFFERSON STANDARD BROADCASTING) FILE NO. BRCT-55
COMPANY)
)
For Renewal of License of)
Station WBTV)
Charlotte, North Carolina)

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 1967 Released: May 25, 1967

1. We have before us: (a) the above application which was granted on January 26, 1967 by delegated authority under Section 0.281 of the Commission's Rules; (b) a Petition for Reconsideration and Revision of that grant filed by Miss [Candice] O. Ray on February 27, 1967 and responsive pleadings thereto.

2. Without reaching the question of Petitioner's standing we have thoroughly reviewed the merits of Petitioner's claims.

3. In 1952 Petitioner was involved in a private contractual dispute with WBTV regarding the production by her of a television program entitled "Let's Cook Quick". During the period 1953 through 1957 Petitioner unsuccessfully litigated this matter in the North Carolina courts. Thereafter, in December 1960, she filed a protest against WBTV's license renewal in which she attempted to show that the licensee's actions in connection with the 1952 contractual dispute and the subsequent lawsuits reflected adversely on its character qualifications. Licensee filed a response on March 9, 1961. By letter dated May 17, 1961, we denied Petitioner's request for a hearing and granted WBTV's renewal application -- concluding that her complaint was a private controversy which had been litigated in the courts of North Carolina.

- 2 -

4. Subsequently, in letters to the Commission in early 1965 and again in complaints she filed in September 1966 against WBTM's renewal application, Petitioner attempted to establish that the licensee made misrepresentations to the Commission in its response to her protest against WBTM's 1960 renewal application. She has alleged that, in connection with her lawsuits against the station, the licensee required its employees to submit written statements of their personal dealings with her. She contended that these statements would show that a contract existed between her and the station in 1952, a point which the licensee denied in its response to her 1960 protest. In support of her allegations Petitioner has submitted copies of letters addressed to her in 1952 and 1964 by Mr. Samuel C. Zurich, a former employee of WBTM.

5. The licensee, in letters to the Commission, has repeatedly and emphatically denied that it possesses such written statements of its employees. Moreover, Mr. Zurich has explained to the Commission in letters dated April 2, 1965 and December 14, 1966, that he did not give a written statement to WBTM and that the "statement" to which he referred in his letters to Petitioner was an informal and oral accounting of his experience with Petitioner which he gave to an officer of the licensee and its counsel.

6. By letter dated January 26, 1967 we informed Petitioner that on the basis of all of the information before us we saw no evidence that WBTM had misrepresented facts to the Commission. Accordingly, WBTM's renewal was granted for a regular term on that same day by Broadcast Bureau action.

7. The Petition for Reconsideration contains, in substance, the same information presented to the Commission in early 1965 and again in September 1966. Essentially, the Petitioner attempts to establish (1) the existence of a contract between her and WBTM in 1952 and (2) that WBTM misrepresented to the Commission when it denied the possession of a written statement of its former employee, Mr. Samuel C. Zurich. The question of contract, as this Commission has pointed out to Petitioner on several previous occasions, is a private dispute over which the Commission has no regulatory jurisdiction. Petitioner's presentation on the question of misrepresentation adds nothing of substance that has not already been the subject of our careful consideration. In short, Petitioner has submitted no new information which would warrant a revision of our grant of WBTM's renewal.

8. ACCORDINGLY, IT IS ORDERED, That pursuant to authority delegated to the Chief, Broadcast Bureau in Section 1.106(a) of the Rules, that the grant of the above-captioned renewal application on January 26, 1967 IS AFFIRMED, and the Petition requesting revision of that action IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
(signed)
Ben F. Waple
Secretary

APPENDIX E

[R 304]

O R I G I N A L

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 67-1173
Washington, D. C.

6584

In re Application of)
)
)
JEFFERSON STANDARD BROADCASTING)
COMPANY)
Charlotte, North Carolina) File No. BRCT-55
For Renewal of License of)
Station WBTV)

ORDER

Adopted: October 25, 1967 Released: October 27, 1967

By the Commission: Commissioner Bartley absent.

1. The Commission has before it an application filed on June 26, 1967 by Candis O. Ray requesting a review of the actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above-entitled application and on May 23, 1967 which denied Miss Ray's petition requesting reconsideration of that grant.

2. IT IS ORDERED, That, the Application for Review IS DENIED.

cc:

R. Russell Eagan, Esq.
Jefferson Standard Broadcasting Co.
Candis O. Ray

FEDERAL COMMUNICATIONS COMMISSION

(signed)

Ben F. Waple
Secretary



FEDERAL COMMUNICATIONS COMMISSION



WASHINGTON, D. C. 20554

7853

PUBLIC NOTICE -B

October 25, 1967

Report No. 6761

BROADCAST ACTIONS

The Commission took the following actions on October 25: (Commissioners Hyde (Chairman), Lee, Cox, Loevinger, Wadsworth and Johnson).

* * *

[SR 252]

APPLICATION FOR REVIEW OF LICENSE RENEWAL OF TV STATION WBTV, CHARLOTTE, NORTH CAROLINA, DENIED. The Commission has denied the application of Miss Candis O. Ray for review of the Broadcast Bureau's January 27 grant of the license renewal application (BRCT-55) of Jefferson Standard Broadcasting Company for its television station WBTV, Charlotte, North Carolina, and of the Broadcast Bureau's Memorandum Opinion and Order released May 25 denying Miss Ray's petition for reconsideration of the renewal grant. Miss Ray had requested that the WBTV renewal application be designated for hearing. Her request is based on a breach of contract dispute with WBTV. (By Order.)

- FCC -



APPENDIX G

[SR 254]

November 30, 1967

Miss Candis O. Ray
1545 Eighteenth Street, N. W.
Washington, D. C. 20036

Dear Miss Ray:

This is in response to your letters of November 22nd and 25th with regard to your protest against the renewal of the license of WBTV. I have examined the Public Notice of October 25, 1967, and it does appear that the last sentence is misleading. I have therefore arranged for a corrected Notice to be issued, and am asking Mr. Weinles to send copies of this revised Notice to you.

Very truly yours,

Kenneth A. Cox

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

9246
PUBLIC NOTICE
December 1, 1967

Report No. 6846

BROADCAST ACTIONS

* * *

CORRECTION

[SR 250]

In Broadcast Actions, Report No. 6761, October 25, 1967,
Mimeo No. 7853, Page 2.

APPLICATION FOR REVIEW OF LICENSE RENEWAL OF TV STATION WBTV, CHARLOTTE, NORTH CAROLINA, DENIED. The Commission has denied the application of Miss Candis O. Ray for review of the Broadcast Bureau's January 27 grant of the license renewal application (BRCT-55) of Jefferson Standard Broadcasting Company for its television station WBTV, Charlotte, North Carolina, and of the Broadcast Bureau's Memorandum Opinion and Order released May 25 denying Miss Ray's petition for reconsideration of the renewal grant. Miss Ray had requested that the WBTV renewal application be designated for hearing. Her request is grounded on her allegations that the licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. (By Order.)

- FCC -

APPENDIX H

[SR 250]

December 20, 1967

Candis O. Ray and Associates
1545 Eighteenth Street, N. W.
Washington, D. C. 20036

Dear Miss Ray:

This is in reply to your letter of December 7, 1967, concerning Jefferson Standard Broadcasting Company (WBTV), Charlotte, North Carolina.

With respect to the Commission's Order denying review (FCC 67-1173), it is normal Commission policy to issue such denials without statement of the reasons therefor, in the interests of administrative efficiency. However, the matters of concern to you were considered by the Commission in making the determination. The staff's representations were considered, and I added some information based on my personal familiarity with the file. I feel that the matter was given full and considered treatment by the Commission.

With respect to a further statement by Mr. Zurich, I think he has clarified his statements as much as possible. It seems clear that his references to a "statement on file" with WBTV related not to any written statement, prepared or signed by him, but rather to the fact that he had been interviewed during the law suite and thought that notes had been taken. Accordingly, I do not think it would serve any useful purpose to ask him to submit a further statement.

Very truly yours,

Kenneth A. Cox



APPENDIX I

[SR 279]

September 6, 1968

8430
8-114

Honorable Philip A. Hart
United States Senate
Washington, D. C. 20510

Dear Senator Hart:

This is with further reference to your communication of August 2, 1968, regarding Miss Candis O. Ray's complaints against Station WBTV, Charlotte, North Carolina. In my letter of August 19, 1968, I promised you a full report of this matter.

For the past 13 years Miss Ray has been seeking redress with this Commission for an alleged breach of contract by WBTV back in 1952. The alleged breach arose out of the cancellation by the station of a proposed television series being produced by Miss Ray entitled, "Let's Cook Quick". In the mid 1950's, Miss Ray lost two law suits which she had commenced against WBTV for damages arising out of the alleged breach. Then in 1959, she commenced a series of complaints to this Commission, claiming in addition to the alleged wrongful breach, that she was denied due process in her suits against the station because of the corruption in the North Carolina state courts and collusion between her attorney and WBTV's North Carolina counsel. Since November 1959, she has written some 40 letters and two telegrams to this Commission, at least four letters to the Department of Justice and she has also written to the Attorney General of the United States and to the President. She has also made numerous telephone calls to the Commission and has spent many hours conferring with members of the staff. She has been repeatedly advised in person and in official Commission letters, in a By Direction letter from the Commission (Attachment A) and in a letter from former Chairman Minow (Attachment B) that her contractual dispute with WBTV is a private matter which is outside the purview of the Commission's regulatory authority and which had already been decided by the North Carolina courts.

2.

Honorable Philip A. Hart

In complaints against WBTV's 1966 application for renewal of its license, Miss Ray alleged that the licensee misrepresented and wrongfully withheld relevant material from the Commission in its responses to her earlier complaints. These matters are discussed at length in the Commission's letter to her, dated January 26, 1967 (Attachment C) which notified her of the grant of WBTV's 1966 renewal application and in a Memorandum Opinion and Order, dated May 23, 1967 (Attachment D) in which the Chief of the Broadcast Bureau denied Miss Ray's Petition for Reconsideration of that action. Subsequently, on June 26, 1967, Miss Ray filed an "Application for Review" and the matter was presented to the Commission. By Order, released October 27, 1967 (Attachment E) the Commission, after full consideration of the entire matter, denied Miss Ray's "Application for Review". Since then Miss Ray has written letters to Commissioner Kenneth Cox on November 22, 1967 and November 25, 1967 regarding the mischaracterization of her complaints in our Public Notice describing the denial of her "Application for Review". I have enclosed a copy of Commissioner Cox's November 30, 1967 reply (Attachment F) to Miss Ray together with copies of the original Public Notice (Attachment G) dated October 25, 1967 and the corrected one which we issued on December 1, 1967 (Attachment H).

On December 7, 1967 Miss Ray again wrote to Commissioner Cox and expressed her dissatisfaction with the Commission's handling and disposition of her "Application for Review". I have enclosed a copy of Commissioner Cox's December 20th reply (Attachment I) to Miss Ray.

On January 23, 1968, Miss Ray sent identical letters to each of the Commissioners - expressing her dissatisfaction with the handling of her complaints and requesting further Commission action. Enclosed are answers to that letter from Commissioner Lee (Attachment J) and former Commissioner Loevinger (Attachment K).

Miss Ray then followed with a letter to me on February 12, 1968, and another apparently addressed to me on June 7, 1968, which we have no record of receiving.

I trust that the above chronology together with the attached material will give you some idea of Miss Ray's long and, what seems to be, never ending efforts against Station WBTV. We have through the years carefully considered Miss Ray's allegations against WBTV and her latest round of complaints against the station's 1966 renewal application, as Commissioner Cox stated to her in his December 20, 1967 letter, were "given full and considered treatment by the Commission". In these circumstances, and in the interests of administrative finality the matter is considered closed.

[SR 277]

3.

Honorable Philip A. Hart

Should you desire any further information please do not hesitate
to call on me.

Sincerely yours,

Rosel H. Hyde
Chairman

Enclosures

P.S. I am also returning Miss Ray's letter to you dated July 12,
1968 together with her enclosures.



APPENDIX J

[R 484]

December 4, 1969

8427-B

Miss Candis O. Ray
2700 Connecticut Avenue, N. W.
Washington, D. C. 20008

Dear Miss Ray:

This refers to your complaint against Station WBTV, Charlotte, North Carolina dated November 24, 1969. In your complaint you repeat charges that the licensee made misrepresentations to the Commission and maintain that the Commission and the Broadcast Bureau committed two basic errors in its previous handling of the matter.

The first error made by the Commission according to your complaint is that it issued "Two distinct contradictory opinions and rulings 'By Order' of F.C.C....", when, in fact, there was but one Order dated October 25, 1967. Apparently, you are confusing the Order with the subsequent public notices. The second public notice regarding the Order merely corrected the first notice and neither of them was an Order. Thus, your statement that the Commission has issued "contradictory opinions" is without foundation.

The second, alleged error committed by the Commission was that it considered the contractual dispute and not the allegations of deliberate misrepresentations. In numerous letters from the Commission, you have been advised that this Commission, as a matter of policy, does not exercise jurisdiction in questions of contractual right and/or private controversy. Consideration has been given to your allegations of deliberate misrepresentations by the licensee as stated in the Memorandum Opinion and Order of May 25, 1967, the Order of October 27, 1967 and in numerous letters since 1959.

In your complaint you present no material that has not been previously considered. A complete review of all aspects of your allegations has been made, and it has been determined that a grant of the application for renewal of license of Station WBTV would serve the public interest, convenience and necessity.

[R 485]

Miss Candis O. Ray

2.

In view of the foregoing and pursuant to Section 0.281(aa) of the Commission's Rules, your "complaint/petition" is dismissed as repetitious.

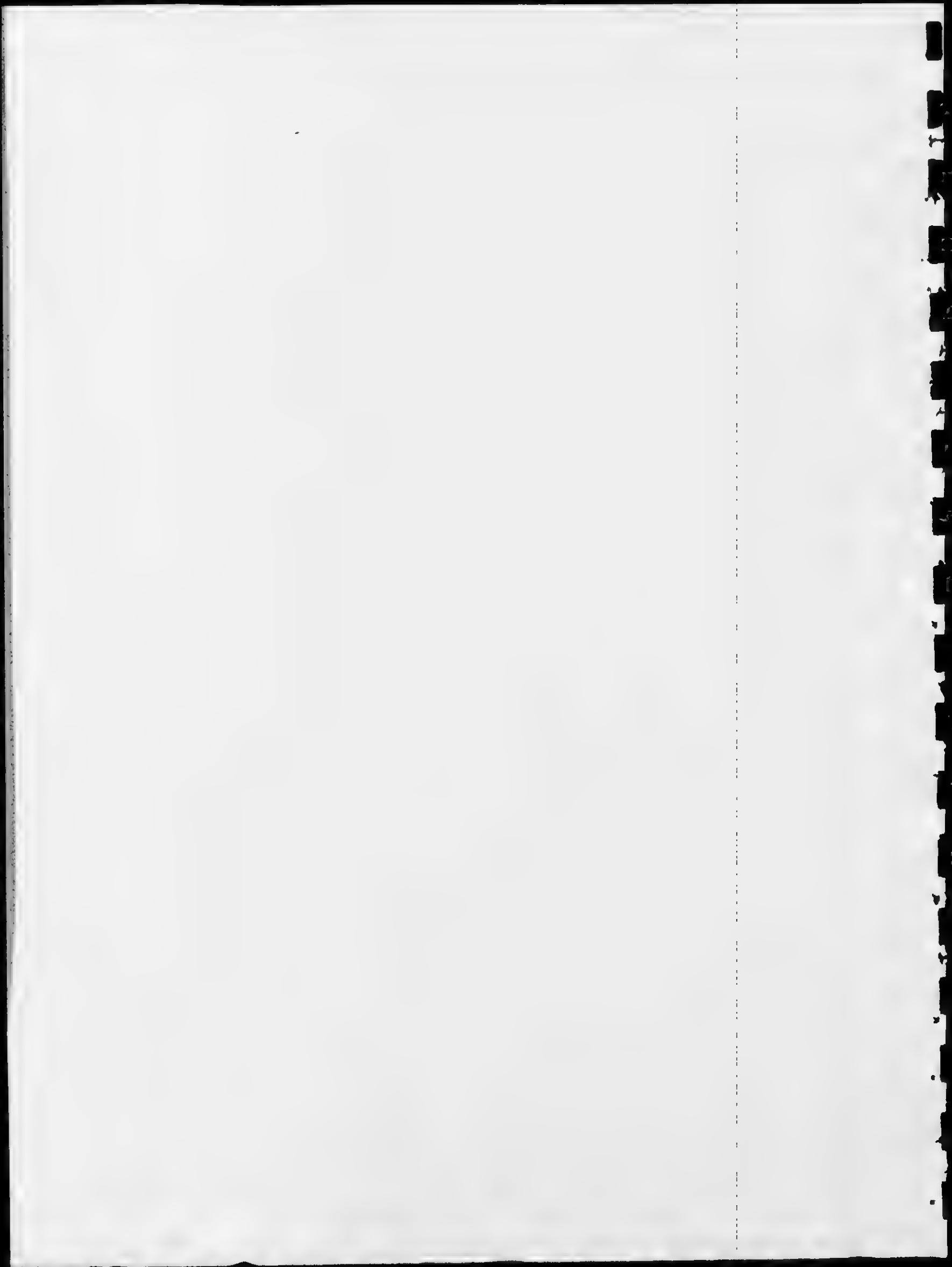
Sincerely yours,

George S. Smith
Chief, Broadcast Bureau

cc:

Station WBTV

Joseph Chachkin - General Counsel's Office



BRIEF FOR INTERVENOR

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,027

CANDIS O. RAY,

Appellant.

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

JEFFERSON STANDARD BROADCASTING COMPANY,
Intervenor.

ON APPEAL FROM MEMORANDUM OPINIONS AND ORDERS
OF THE FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 24 1970

Nathan J. Paulson
CLERK

R. RUSSELL EAGAN
of
Kirkland, Ellis, Hodson,
Chaffetz, Masters & Rowe
1776 K Street, N.W.
Washington, D.C. 20006

Attorneys for Intervenor

August 24, 1970

(i)

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APPENDICES

1. Chronological Summary of Appellant's Claims Re Alleged
1952 Breach of "Let's Cook Quick" Contract.
2. Appellant's Letters of November 7, 1961 and March 12,
1962 to the Justice Department.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,027

CANDIS O. RAY,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee,

JEFFERSON STANDARD BROADCASTING COMPANY,

Intervenor.

ON APPEAL FROM MEMORANDUM OPINIONS AND ORDERS
OF THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR INTERVENOR

STATEMENT OF QUESTION PRESENTED¹

Intervenor agrees with and adopts the statement of the questions presented in Appellee's Brief. Intervenor also believes a question is presented as to whether Appellant has standing to appeal the Memorandum Opinion and Order

¹ This case has not previously been before this Court.

adopted February 11, 1970 and released February 16, 1970, a copy of which is reproduced as Appendix A of Appellee's Brief.

COUNTERSTATEMENT OF THE CASE

Intervenor agrees with and adopts the counterstatement of the case set forth in Appellee's Brief.

Appendix 1 hereof summarizes the record² events which occurred or allegedly occurred between 1952 and 1957 respecting a proposed program entitled "Let's Cook Quick"; the documents filed with Appellee by Appellant respecting "Let's Cook Quick" between December 8, 1960 and January 9, 1970; the responses thereto filed by Intervenor; and the actions taken with respect thereto by the Appellee.

Appellant in this proceeding, which is related to the WBTV 1969 renewal application, reasserts claims she previously advanced in over forty separate communications to Appellee (SR 279) that WBTV renewal applications filed in 1960, 1963 and 1966 should not have been granted because in her view:

a. Intervenor in 1952 breached a contract with Appellant respecting her contemplated program entitled "Let's Cook Quick". See Appendix 1, parts B 1b and D 6.

b. Adverse judgments rendered against Appellant by the Courts of North Carolina in 1955 and 1957 respecting her "Let's Cook Quick" breach of contract claims were the result of improper "influence" and were "invalid". See Appendix 1, parts A 15, A 23, A 24, B 1f, B 1j, C 1a and C 4.

² The Record filed April 16, 1970 is cited as "R". The Supplemental Record filed May 28, 1970 is cited as "SR".

c. Intervenor submitted "false statements" in affidavits filed with Appellee which denied that a contract was breached in 1952 regarding "Let's Cook Quick". See Appendix 1, parts B 2, C 1b, D 1, D 9 and D 17.

d. Intervenor, contrary to its denials to Appellee, has in its possession "statements" regarding the "Let's Cook Quick" controversy other than those submitted to Appellee which, if produced, would prove the "definite existence" of a 1952 contract and that "untrue statements" were submitted by Intervenor regarding the alleged 1952 breach of contract. See Appendix 1, parts D 1, D 3, D 6 and D 17d.

The 1960, 1963 and 1966 WBTV renewal applications were granted and the above assertions were rejected by actions of Appellee which became final in 1961, 1963 and 1967. See Appendix 1, parts B 3, C 5, D 19 and E 6. The instant appeal is taken from Appellee's Order adopted February 11, 1970 and released February 16, 1970 (R 527) which affirmed a December 4, 1969 staff action (R 484-485). The December 4, 1969 staff action dismissed as repetitious a November 24, 1969 complaint (R 480-482) concerning the 1952 "Let's Cook Quick" controversy filed by Appellant in relation to WBTV's 1969 renewal application.³

ARGUMENT

Intervenor agrees with and adopts the Argument set forth in Appellee's Brief concerning the merits of the appeal.

³ The WBTV renewal application filed September 2, 1969 (R 327C-327D and R 328-470) was granted by staff action on November 26, 1969 (R 483).

CONCLUSION

If Appellant were assumed to possess standing, her appeal should be denied for the reasons set forth in Appellee's Brief.

Intervenor respectfully suggests that the appeal should be dismissed, *sua sponte*, on the ground that Appellant lacks standing to appeal the February 11, 1970 *en banc* Order of Appellee (R 527). Appellant, who does not allege that the grant of WBTM's 1969 renewal application caused her to suffer electrical interference or economic injury, does not reside in the WBTM service area (Appellant's Brief, p. 3) and does not speak for any segment of the WBTM viewing public concerning a matter which relates to the public interest, convenience and necessity. Cf. *Anthony R. Martin-Trigona v. FCC*, No. 23, 601, D.C. Cir. August 6, 1970. Her stale and previously rejected claims that WBTM "misrepresented" and "withheld" information regarding "Let's Cook Quick" do not relate to WBTM's performance of its public trust; they relate entirely to her version of a *private* contract dispute which was adjudicated with finality by North Carolina courts between 1953 and 1957.

The purpose of Section 402(b) of the Communications Act of 1934, as amended, 47 U.S.C. §402(b) (1964), is not to provide Appellant with a forum in which to air purely private grievances. As the Supreme Court observed in *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4 at 14 (1942):

" . . . Congress gave the right of appeal to persons 'aggrieved or whose interests are adversely affected' by Commission action But these private litigants have standing only as representatives of the public interest."

To similar effect is *Office of Communication of United Church of Christ v. FCC*, 123 U.S. App. D.C. 328, 359 F.2d 994 (1966) in which this Court held that "some 'audience participation' must be allowed in license renewal proceedings" and noted that "responsible and representative groups eligible to intervene [and appeal]" include "such community organizations as civic

associations, professional societies, unions, churches, and educational institutions" which "tend to be representatives of broad as distinguished from narrow interests, public as distinguished from private or commercial interests." *Id.* at 339 and 1005. In connection with its holding, this Court stated (*Id.* at 340 and 1006):

" . . . [T]here may be efforts to exploit the enlargement of intervention [and appeal], including spurious petitions from private interests not concerned with the quality of broadcast programming, since such private interests may sometimes cloak themselves with a semblance of public interest advocates [A]t this point we can only emphasize that intervention [and appeal] on behalf of the public is not allowed to press private interests but only to vindicate the broad public interest relating to a licensee's performance of the public trust inherent in every license."

Respectfully submitted,

R. RUSSELL EAGAN

Kirkland, Ellis, Hodson, Chaffetz,
Masters & Rowe
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August 24, 1970

Appendix 1

CHRONOLOGICAL SUMMARY OF APPELLANT'S CLAIMS RE
ALLEGED 1952 BREACH OF "LET'S COOK QUICK" CONTRACT

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A. Prior to WBTV Renewal Filed August 26, 1960¹

1. 7/15/49 (FCC Files): Intervenor commenced operating WBTV.
2. May, 1952 (SR 112, 139 & 133): Appellant met with Mr. Crutchfield and was referred to Mr. Tredwell who examined materials she left concerning a proposed program entitled "Let's Cook Quick".
3. 8/?/52 (R 289): Appellant claims Mr. Zurich "advised" her by telephone "that her program 'Let's Cook Quick' had been accepted . . ."
4. 8/?/52 (R 291): Appellant claims Mr. Marion "offered" by telephone "a definite [WBTV] time segment . . . for . . . 'Let's Cook Quick'."
5. 8/?/52 (R 292): Appellant claims Mr. Jorgenson, upon being called by her by telephone, "confirmed" to her that "Let's Cook Quick" was to be "telecast over WBTV with the starting date October 2, 1952 at 4:00 P.M. (Thursdays) — every week for a thirtween-week period . . ."
6. 8/5/52 (R 145): Letter from Mr. Veller to Appellant. He acknowledged receipt of her "order for the 'Let's Cook Quick' program."
7. 8/25/52 (R 155): Contract signed by Appellant and A. K. Sutton, Inc. re "Let's Cook Quick".
8. 8/26/52 (R 151): Letter from Appellant to Mr. Marion. Enclosed a copy of 8/25/52 "Contract".
9. 9/2/52 & 9/12/52 (R 148-150): Letters from Appellant to Mr. Spicer.
10. 10/7/52 (SR 118 & 132): "Dry-Run" of "Let's Cook Quick", following which Mr. Tredwell advised Appellant and A. K. Sutton, Inc. that Appellant's "fundamental program concept was weak and recommended that it not be further belabored" (SR 132).

¹ Record filed April 16, 1970 cited as "R"; Supplemental Record filed May 28, 1970 cited as "SR".

² WBTV renewal applications were granted on 3/26/52; 11/12/53; 2/9/55; and 6/18/58 (BRCT-55).

11. 10/13/52 (SR 8): Letter from Appellant confirming her oral release of A. K. Sutton, Inc. from the 8/25/52 Contract for payment to her of \$309.
12. 5/21/53³ (SR 108-113): Complaint filed by Appellant in the Superior Court of the County of Mecklenburg, North Carolina. Alleged that because of "the conspiracy between WBTV and Mr. Crutchfield and Mr. Tredwell, and the violation of WBTV's agreement with this plaintiff, this plaintiff has suffered tremendous business loss . . .". Sought damages of \$175,000.
13. 7/10/53 (SR 105-107): Answer of defendants to 5/21/53 Complaint, supported by a 7/9/53 Affidavit of Mr. Crutchfield (SR 105).
14. 1/11/55 & 1/12/55 (R 271): Mr. Miller interviewed "WBTV employees, including Mr. Zurich" in Mr. Crutchfield's office "in connection with preparing for the trial of the first law suit . . . instituted by [Appellant] on May 21, 1953."
15. 5/11/55 (SR 104): Order of Judge Clarkson, following presentation of Appellant's testimony on May 10 and May 11, 1955 (SR 123-124 and 112). Appellant's 5/21/53 action was "dismissed as of non-suit" (SR 104).
16. 6/9/55 (SR 100): Judgment of Judge Patton granting motion of plaintiff to withdraw her appeal to the May 11, 1955 Order and ordering that the 5/21/53 "action be dismissed."
17. 8/23/55⁴ (SR 92-97): Complaint filed by Appellant in the Superior Court of Caldwell County, N.C., naming as defendants Charles Crutchfield and Jefferson Standard Broadcasting Company. Alleged that as a result of a conference held with Mr. Crutchfield in the middle of 1952 (SR 96), "a verbal contract was entered into . . ." (SR 95); that "a script under the name of 'Let's Cook Quick' . . . was subsequently accepted by the defendants . . . [and] that thereupon the plaintiff sold the program to

³ First North Carolina Law Suit. Named following as defendants: WBTV and Messrs. Crutchfield and Tredwell.

⁴ Second North Carolina Law Suit.

A. K. Sutton, Inc. . . . but the defendants violated plaintiff's contract before definite contracts could be executed for said program" (SR 94); and that "by reason of the said unlawful, wilful and wrongful acts and conduct of the defendants in breaching the aforesaid contract, plaintiff has suffered loss and damage in the sum of Seventy-five Thousand Dollars (\$75,000)" (SR 92-93).

18. 9/29/55⁵ (SR 59-64): Complaint filed by Appellant in the Superior Court of Caldwell County, N.C. Repeated allegations of 8/23/55 complaint.
19. 11/2/55 (SR 87-91): Answer filed by defendants to 8/23/55 Complaint.
20. 12/3/55 (SR 73): Judge Rudisill ordered that Appellant "be non-suited and dismissed from this action" (Complaint filed 8/23/55) and that "she is hereby given 10 days in which to file her amended complaint against the defendant . . ."
21. 12/?/55 (SR 67-72): Amended Complaint in 8/23/55 suit filed.
22. 12/22/55 (SR 42-58): Answer filed by defendant to 9/29/55 Complaint and to Amended Complaint filed 12/?/55
23. 9/24/57 (SR 66): Judge Nettles ordered that "plaintiff be non-suited . . ." with respect to Amended Complaint filed December ?, 1955 in the second of Appellant's three suits.
24. 9/24/57 (SR 40-41): Judgment entered by Judge Nettles re 9/29/55 Complaint, following conclusion of plaintiff's evidence. Ordered that the action "be and the same is hereby dismissed . . ." (SR 40).
25. 12/9/57 (SR 39): Judgment entered by Judge Nettles dismissing appeal to 9/24/57 Judgment.

⁵ Third North Carolina law suit.

B. WBTV Renewal Filed August 26, 1960

1. 12/8/60 (SR 1-21): "Complaint" received by the Commission from Appellant. The Complaint is summarized in the affidavit executed by Mr. Crutchfield on March 8, 1961 (see SR 139-141; pars. 2-4). The "Complaint" included the following allegations:
 - a. The renewal of WBT and WBTV "would not serve in the public interest because of the following business practices and actions by the management of the licensee involving Character Qualifications . . ." (SR 21).
 - b. At "the very moment . . . the first of three TV shows I had sold . . . [was] ready for air production over . . . WBTV . . . the management of the licensee WBTV breached the agreement without giving a reason . . ." (SR 21).
 - c. "The licensee's management gave no reason to the agency on why the first of the three shows was held off the air and not telecast as per the contract . . . signed with this agency by Philco's distributor, A. K. Sutton, Inc. . . ." (SR 20-21).
 - d. Time "was set aside and reserved by the licensee WBTV for the show, 'Let's Cook Quick' . . ." (SR 20).
 - e. "The licensee WBTV had a station staff writer to re-write some of the script for 'Let's Cook Quick', thus accepting it fully for air telecasting over WBTV . . ." (SR 20).
 - f. "I secured the services of a Charlotte civil attorney and entered a damage suit in the amount of \$175,000.00, actual and punitive damages. The attorney I employed . . . deliberately prepared my complaint against the licensee WBTV in an improper way . . . My attorney was influenced to 'sell me out'" (SR 17).
 - g. "I secured then the services of an attorney near my home town, Lenoir, North Carolina and he filed a new case against WBTV . . . but again the judge before whom this case was brought had been influenced . . ." (SR 16).
 - h. "The case was brought to trial in Caldwell County the second time . . . at which trial hearing the Superior Court Judge, Judge Z.B. Nettles . . . upheld the licensee's plea . . . Non-suited the case again" (SR 15-16).

- i. "This same . . . Judge was influenced to act illegally in a connecting and relating case . . ." (SR 15).
- j. "Because of this great power [of the licensee] to influence evil in the courts and among local and federal government officials to deprive and deny a citizen his rights under the law of the land, it would not be in the best interest of the people in the Charlotte area for the Federal Communications Commission to renew the application of Stations WBT & WBTV for continued broadcast operations" (SR 15).

2. 3/9/61 (SR 23-145): WBTV Reply to Appellant's 12/8/60 "Complaint." The Reply included affidavits of Messrs. Crutchfield and Tredwell and the following denials:

- a. That Applicant "established any credit arrangements with the defendant . . ." (par. 10 of Answer filed 7/10/53, supported by Mr. Crutchfield's affidavit executed 7/9/53 submitted with Mr. Crutchfield's 3/8/61 Affidavit – see SR 106, 105 & 136).
- b. That "any contract between WBTV and Miss Ray was ever discussed or entered into verbally or otherwise . . ." (par. 9 of Mr. Crutchfield's affidavit executed 3/8/61 – see SR 138).
- c. That "time was ever cleared for the program ["Let's Cook Quick"], that . . . [a] starting date for the program was ever given Miss Ray, that the program had ever been accepted by WBTV, or that the program was ever put on a 'stand by' basis . . ." (par. 14 of affidavit executed by Mr. Crutchfield on 3/8/61 – see SR 137).

3. 5/17/61 (SR 146-147): Letter from FCC Secretary, "BY DIRECTION OF THE COMMISSION," to Applicant which denied her 12/8/60 Complaint and granted the renewal applications of WBT and WBTV.

4. 5/26/61 (SR 290): Letter from FCC Secretary to Appellant advising that the Reply filed by WBTV on 3/9/61 "is available for public inspection in the public reference room of the Commission . . .".

5. 6/3/61 (SR 291): Letter signed by Appellant and addressed to "FCC" stating that the Appellant had "read and examined" the Reply filed by WBTV on 3/9/61.

6. 6/16/61: The May 17, 1961 grant of the WBT and WBTV renewal applications became final.

C. WBTV Renewal Filed August 26, 1963

1. 7/15/61 (SR 147A-147E): Letter from Applicant to FCC. Appellant made the following assertions regarding WBTV's March 9, 1961 Reply:
 - a. "I could continue to show the FCC through letters and other documents that there was malicious conspiracy between attorneys in Charlotte, N.C., corruption and even conspiracy in the courts in depriving me a jury verdict and a jury trial in both these two connecting cases, and that the judgements submitted to the FCC by the licensee are not valid, but were obtained fraudulently." (SR 147E).
 - b. "There are many, many false statements sworn to under oath of seal in the affidavits submitted to the FCC by the licensee WBTV. I ask that the Commission keep this file active for these cases are not closed. I ask of the Commission to examine the false statements sworn to under oath by the licensee, its attorney and the others submitting affidavits to the Federal Communications Commission, and to report their findings to the U.S. Justice Department . . ." (SR 147E).
2. 11/7/61⁶: Appellant wrote the Criminal Division of the Justice Department (with a copy to the Commission) asking to be advised as to "what action has been taken by the Justice Department on the false statements sworn under oath to be the truth and filed [3/9/61] with the Federal Communications Commission by the licensee WBT & WBTV . . ." (R 202).
3. 3/5/62 (SR 148-173): Appellant again wrote to the Justice Department concerning the alleged 1961 "false statements" of WBTV.
4. 3/12/62⁶: Appellant again wrote to the Justice Department and stated that the judgments rendered against her in the North Carolina law suits "are not fair nor should they be accepted as true, valid judgments for I was denied and deprived my rights in both cases." (R 203).

⁶ Appellant's November 7, 1961 and March 12, 1962 letters are reproduced in Appendix 2 of Intervenor's Brief.

5. 11/29/63 (FCC Files): The Commission granted WBTM's renewal application filed August 26, 1963.
6. 12/31/63: The November 29, 1963 grant of the WBTM renewal application became final.

D. WBTM Renewal Filed August 8, 1966

1. 1/25/65 (SR 175): Appellant wrote to the Commission concerning the Reply filed in May of 1961 by WBTM to her December 1960 "Complaint". She alleged that "statements secured by WBTM Management of its employees . . . [respecting "Let's Cook Quick"] were withheld by licensee WBTM in its Answer to the Commission and will serve to prove that untrue statements were made by the licensee WBTM in its Answer to the Commission in its sworn statements."
2. 3/9/65 (SR 177-80): In response to FCC 2/10/65 Request (SR 176), WBTM filed a letter signed 3/8/65 by Mr. Crutchfield. He stated that "full information" had been submitted concerning Appellant's 1960 allegations on 3/9/61 and that the Charlotte WBTM attorneys took no statement of any employee in connection with preparation for the North Carolina 1953-1957 litigation "other than oral conferences with the various witnesses." (SR 179).
3. 3/19/65 (SR 181-84): Letter from Appellant to Commission. She submitted three letters written to her by Mr. Zurich in 1962 and 1964 which she claimed "will serve to prove that licensee WBTM has willfully misrepresented itself to the Commission." (SR 184).
4. 4/2/65 (R 169-170): Letter from Mr. Zurich to the Commission advised that the "statement" referred to in his letters to the Appellant "was an informal accounting [given to Messrs. Crutchfield and Miller] of my experience with Miss Ray's program 'Let's Cook Quick' . . . [;] there was no written statement provided by me or anyone else in this meeting..."
5. 4/8/65 (R 175-176): WBTM letter to Commission in response to Appellant's 3/19/65 letter. Mr. Crutchfield denied again the possession of any written statements from any employees other than his 3/8/61 affidavit (SR 134-141), Mr. Tredwell's 2/23/61 affidavit (SR 131-133), and the undated statement of Jeanne Alexander (SR 180).

6. 9/9/66 (SR 188-190): Letter from Appellant to Commission. Requested the Commission to require WBTV to "submit all statements it has in its files concerning the contract negotiations and the production of the 'Let's Cook Quick' show . . ." . (SR 189). *Alleged that the production of such statements from WBTV staff employees "will prove the definite existence of contract between the Candis O. Ray Agency and WBTV for the production of 'Let's Cook Quick' . . ." . (SR 189, Emphasis Added).*
7. 9/17/66 (SR 205): Letter from Appellant to Commission. Alluded to the "newly discovered evidence" regarding "statements" referred to in her letters of 1/25/65, 3/19/65 and 9/9/66.
8. 12/21/66 (SR 206-226): WBTV letter to Commission replying to Appellant's 1966 letters.
9. 12/28/66 (SR 227-228): Letter from Appellant to Commission. Repeated charge that there were "contradictory statements sworn under oath in affidavits and submitted to the Commission by Licensee WBTV as its formal Answer in 1961 . . ." . (SR 228).
10. 1/26/67 (R 122A-122F): Letter from FCC Secretary to Appellant regarding letter of 9/9/66 and subsequent letters. Stated "On the basis of all the information which we have obtained, we see no evidence which indicates that WBTV misrepresented the facts to the Commission when it denied that it had written statements from employees other than those which have been previously furnished." (R 122E) The letter concluded by stating "Accordingly, upon a finding that the public interest, convenience and necessity will be served, we have this day renewed WBTV's license for a regular term." (R 122F).⁷
11. 2/27/67 (R 123-178): "Petition for Rehearing and Reconsideration" filed by Molnar and Gammon on behalf of Appellant directed against the Commission's letter of 1/26/67.
12. 3/14/67 (R 179-218): WBTV Opposition to 2/27/67 Petition.
13. 3/21/67 (R 219-229): "Reply" filed by Molnar and Gammon on behalf of Appellant.

⁷ B-95308 dated January 27, 1967.

14. 5/25/67 (R 230-231): Memorandum Opinion and Order of Chief of Broadcast Bureau pursuant to Rule 1.106(a) affirming staff grant of 1/26/67 (granted pursuant to Rule 0.281) and denying Appellant's 2/27/67 petition.
15. 6/26/67 (R 232-248): "Application for Review" filed by Molnar and Gammon on behalf of Appellant directed against 5/25/67 Order.
16. 7/13/67 (R 251-274): WBTM "Opposition to Application for Review". Included affidavits of Messrs. Crutchfield and Miller.
17. 7/24/67 (R 276-299): "Reply to Opposition to Application for Review" submitted by Molnar and Gammon on behalf of Appellant. Stated that the WBTM "misrepresentations" consisted of the following four (R 285):
 - a. "WBTM has specifically denied to this Commission that Applicant had 'established any credit arrangements with WBTM'."⁸
 - b. "WBTM has denied that any contract between Appellant and WBTM was ever discussed."⁹
 - c. "WBTM denies that time was ever cleared on WBTM for Applicant's program ('Let's Cook Quick'); that any starting date was ever given Applicant for her program; that the program had ever been accepted by WBTM; and that the program was ever put on a stand-by basis."¹⁰
 - d. "At the very time WBTM had in its possession, or that of its agents, statements of its employees detailing and, Applicant submits, giving the lie to the aforesaid three denials (A, B, C, *supra*), WBTM solemnly informed that it had given the Commission 'full information'. (According to WBTM, there were no statements submitted by or taken from any employee bearing on the truth or falsity of its representations.)"¹¹

⁸ See Item B 2a hereof.

⁹ See Item B 2b hereof.

¹⁰ See Item B 2c hereof.

¹¹ See Items D 1, 2, 5, 8, 16 and 18 hereof.

18. 8/2/67 (R 300-302): Affidavits of Messrs. Crutchfield and Miller executed 7/31/67 (R 301-302).
19. 10/25/67 (R 304): Order adopted by the Commission *en banc* denying the Application for Review filed 6/26/67; released 10/27/67.¹²
20. 11/27/67: 10/25/67 denial of Application for Review became final.

E. WBTV Renewal Filed September 2, 1969

1. 1/23/68 (SR 229-230): Letter from Appellant to Chairman Hyde regarding the *en banc* 10/25/67 denial of the 6/26/67 Application for Review.
2. 2/12/68 (SR 231-233): Letter from Appellant to Chairman Hyde. Supplements letter of 1/23/68.
3. 6/7/68 (SR 234): Letter from Appellant to Chairman Hyde. Supplements letter of 2/12/68.
4. 9/6/68 (SR 239-279): Letter from Chairman Hyde to Senator Hart.¹³
5. 10/28/68 (SR 235-236): Letter from Appellant to Chairman Hyde. Enclosed copies of her letters of 2/12/68 and 6/7/68.
6. 11/29/68 (SR 237): Letter from Chief of Broadcast Bureau to Appellant acknowledging receipt of Appellant's letter of 10/28/68. Quoted Chairman Hyde's 9/6/68 letter to Senator Hart that "in the interests of administrative finality the matter is considered closed" (SR 237, see also SR 278).

¹² This action of the Commission was publicly announced in Public Notice B-7853 dated October 25, 1967 (R 499-500) and Public Notice B-9246 dated December 1, 1967 (R 501-502). See November 30, 1967 letter of Commissioner Cox to Appellant (R 503).

¹³ Chairman Hyde stated that Appellant in connection with the 1952 contract dispute had "written some 40 letters and 2 telegrams to this Commission, at least 4 letters to the Department of Justice and she has also written to the Attorney General of the United States and to the President." (SR 279).

7. 12/11/68 (SR 282-283): Letter from Appellant to FCC General Counsel. Refers to the Commission's 10/25/67 denial of her 6/26/67 Application for Review: "I know the Commissioners did not review the Petition filed by Molnar and Gammon in my behalf . . ." . (SR 282).¹⁴
8. 8/22/69 (R 327A-327B): Letter from Appellant to Chairman Hyde. Stated that her "letter will suffice as a formal complaint against Licensee WBTV for the reasons set forth in" the 2/27/67 Petition for Rehearing and Reconsideration, "which Petition was not properly executed by the Federal Communications Commission . . ." . (R 327B).
9. 9/2/69 (R 327C-327D): Letter from WBTV to the Commission. States that an application to renew the WBTV license is being filed simultaneously therewith and responds to Appellant's 8/22/69 letter to Chairman Hyde. Points out that the Order released 10/27/67 became final on 11/27/67 (R 327D).
10. 11/24/69 (R 480-482): "Complaint" filed by Appellant, pro se, requesting Commission to "reconsider the Opinion and Ruling" of 1/26/67 (R 480). Requested "a hearing before the Commission to compel, as proper procedure, that Licensee WBTV will comply and answer charges made by Petitioner on file in this complaint matter." (R 482)
11. 11/26/69 (R 483): Certificate of renewal for WBTV.
12. 12/4/69 (R 484-485): Letter to Appellant from Chief of FCC Broadcast Bureau. Dismissed as repetitious, pursuant to Rule 0.281(aa), Appellant's Complaint of 11/24/69.
13. 12/19/69 (R 486-505): "Petition for Reconsideration For Hearing" filed by Appellant, pro se, directed against 12/4/69 letter of the Chief of the Broadcast Bureau.
14. 12/31/69 (R 506-519): WBTV Opposition to 12/19/69 Petition. Errata filed 1/13/70 (R 525-526).

¹⁴ The record also shows that Appellant corresponded with Chairman Minow on January 21, 1963 (SR 264); with Commissioner Cox on November 22, 1967 (SR 254), November 25, 1967 (SR 254) and December 7, 1967 (SR 250); with Commissioner Lee on January 23, 1968 (SR 249); and with Commissioner Loevinger on January 23, 1968 (SR 248).

15. 1/9/70 (R 520-524): Appellant's "Reply" to WBTW Opposition.
16. 2/11/70 (R 527): Memorandum Opinion and Order adopted by the Commission *en banc* which denied Appellant's "Petition for Reconsideration For Hearing" filed 12/19/69 (which was treated as an Application for Review).¹⁵ The Order, released 2/16/70, stated:
 - a. The allegation that WBTW "misrepresented material facts to the Commission has previously been thoroughly reviewed by the Commission . . .".
 - b. "The presentation [in Appellant's pleading] . . . adds nothing of substance that has not already been the subject of our careful consideration."
 - c. The Appellant "is essentially asking for a reconsideration of the Order which became final in 1967."
 - d. The Commission "is precluded from the consideration of the matter by the thrust by Section 405 of the Communications Act . . ."
 - e. The Chief of the Broadcast Bureau "acted properly in dismissing Miss Ray's complaint [on December 4, 1969]."

¹⁵ The Order stated Appellant's pleading was filed December 22, 1969 (R 527); actually it was filed December 19, 1969 (R 486).

F. Affidavits and Letters of WBTW 1952 Personnel and Counsel

<u>Name</u>	<u>Date</u>	<u>Record</u>
Charles H. Crutchfield	7/9/53 Affidavit	SR 105
Charles H. Crutchfield	3/8/61 Affidavit	SR 134-141
Charles H. Crutchfield	3/8/65 Letter	SR 178-179
Charles H. Crutchfield	4/8/65 Letter	R 175
Charles H. Crutchfield	12/15/66 Letter	R 212-213
Charles H. Crutchfield	7/10/67 Affidavit	R 268-270
Charles H. Crutchfield	7/31/67 Affidavit	R 301
Kenneth I. Tredwell	2/23/61 Affidavit	SR 131-33
F. A. McCleneghan, Esq.	3/7/61 Affidavit	SR 119-124
F. A. McCleneghan, Esq.	4/1/65 Letter	R 176
F. T. Miller, Jr. Esq.	12/12/66 Letter	R 216-217
F. T. Miller, Jr., Esq.	7/10/67 Affidavit	R 271-272
F. T. Miller, Jr., Esq.	7/31/67 Affidavit	R 302
Jack Veller	8/5/52 Letter	R 145
Jeanne Alexander	Undated Memo	SR 177
Paul Marion	11/27/64 Letter	SR 173B
Wallace J. Jorgenson	12/15/66 Letter	R 214-215
Samuel C. Zurich	1/3/62 Letter	R 165
Samuel C. Zurich	1/2/64 Letter	R 166
Samuel C. Zurich	4/27/64 Letter	R 167
Samuel C. Zurich	4/2/65 Letter	R 171-172
Samuel C. Zurich	12/14/66 Letter	R 146-147

Appendix 2

November 7, 1961

Criminal Division
U. S. Department of Justice
Washington 25, D. C.

Please advise what action has been taken by the Justice Department on the false statements sworn under oath to be the truth and filed with the Federal Communications Commission by the licensee WBT & WBTV (Jefferson Standard Broadcasting Company) of Charlotte, North Carolina, and its attorney and others in its formal answer to a complaint which this advertising agency filed with the Federal Communications Commission.

My attorneys in Hickory, North Carolina and Lenoir, North Carolina who personally represented me in these two connecting cases and who are familiar with all actions in the cases have formally filed their personal affidavits with the Federal Communications Commission repudiating the statements sworn to be the truth by the licensee, its attorney and others in their formal answer now filed with the FCC and my attorneys in their affidavits point to the court records now filed with the FCC in support of their statements.

Most sincerely,

/s/ Candis O. Ray
CANDIS O. RAY AGENCY

COR:rl

cc: Federal Communications Commission
Washington 25, D.C.
cc: Jefferson Standard Broadcasting Company
1 Jefferson Place
Charlotte, North Carolina

March 12, 1962

United States Justice Department
Criminal Division
Washington 25, D.C.

It should be noted that in my attorney, Mr. L. H. Wall's BRIEF which was addressed to the United States Department of Justice and attached to my recent affidavit filed with the Justice Department Mr. Wall states on page three of his BRIEF that Judge Zebe V. Nettles "Refused to allow Miss Ray time in which to employ additional counsel" in the Federal Government Official, Joseph C. Travis - Forged Note Furniture Case after my attorney, Mr. Wall, suffered a severe heart attack and was hospitalized and had petitioned the Court (Judge Nettles) to withdraw from my case because of sickness and that he could not continue courtroom practice. The records accompanying Mr. Wall's BRIEF show that the Judge Nettles signed the petition to withdraw on the same day that Mr. Wall asked for withdrawal, but would not allow me an extension of time when Mr. Wall asked Judge Nettles for an extension of time so that I might obtain new counsel; he refused. Though I knew of Mr. Wall's illness and had known of it for several months prior to the petition to the court to withdraw and I had tried desperately to get new counsel in Charlotte but because the case had gotten so deeply involved in local politics no attorney would represent me. And my own counsel, Mr. Wall had told me that I would not get a fair trial in Charlotte.

There was nothing for me to do but to take a voluntary non-suit and against my will. I will be glad to show letters and name the many attorneys in Charlotte whom I contacted to take the case, and they refused because the case had gotten too involved in local political control. Please note also that Judge Nettles did not sign the voluntary non-suit which I had asked for until several days passed, and it was almost a week. Mr. Wall and I were beginning to believe that he was not going to sign it at all, then on February 10, 1958 we received the signed voluntary non-suit. It is attached to Mr. Wall's BRIEF.

The same judge, Judge Zebe V. Nettles, presided over the second WBTV law-suit held in Caldwell County and adjudged it a non-suit after it had been prepared properly and taken into the second county for trial. Also, the famous and controversial transcript (my first testimony given in the first trial in Mecklenburg County) was brought into court while Judge Nettles was presiding

over the case in Caldwell County. Mr. Frank A. McCleneghan, WBTM's legal counsel, presented the transcript to the judge. It was lengthy, almost book size. Judge Nettles allowed my second attorneys on the case about five minutes to scan through the book, and that is all he would allow. It was impossible to read or even note any appreciable content of the transcript in that short period of time, and my attorneys and I had been denied the courtesy or privilege to read or study the transcript before court time, as is explained in my affidavit recently filed with the Department of Justice.

Both of these two connecting cases: the Jefferson Standard Broadcasting Company (WBTM) and the Travis-Furniture-Forged Conditional Sales Contract Case have been denied a jury trial and verdict. The judgments rendered in both of these two cases are not fair nor should they be accepted as true, valid judgments for I was denied and deprived my rights in both cases.

My first attorney, Mr. Arthur Goodman of the Goodman and Goodman law firm of Charlotte, N.C., who represented me in the first WBTM lawsuit wrote to me soon after the Mecklenburg non-suit judgment in the case and asked me to sign a Release with him, releasing him and the Goodman and Goodman law firm of any legal obligations to me. With his letter and Release he had enclosed a check in the amount of \$1.00, which is the amount I was to receive, I assume, to release him, for the Release read in part, "For one dollar and other considerables", etc. I did not sign the Release nor accept the dollar. My Lenoir, N. C. Attorney, Mr. Strickland, at that time saw the release and advised me never to sign a release with the Goodman and Goodman law firm. And I didn't. I did, however, write to Mr. Goodman (and I sent the letter by registered post office mail with requested signature returned to me, and which was done) and I offered to sign his release or another he may wish to prepare if he in turn would straighten out the mistakes in the first complaint, for they had not prepared the case as I had given them the story, and then come back with the case prepared properly and filed again in court. He said he would think about it. Then he refused, saying he thought it would be better that I get another lawyer. He added, "But I don't think you will be able to get one to take the case now." He refused further to return to me my files on the case against WBTM, and the Travis-Forged Note Case. I had then to hire an attorney in Lenoir to force Mr. Goodman to return my files on these two cases. I believe the letter which my attorney, Mr. Strickland of Lenoir, N.C. is made a part of the licensee WBTM's Answer now filed with the FCC. Mr. Strickland wrote to Mr. Goodman and told him that he should be reminded that "Miss Ray is the boss of her litigation," not he, and further if he did not

turn over to me my files on those two connecting cases that he would personally come "Down to Charlotte and look you squarely in the face". Mr. Goodman then turned over my files on the cases, but refused to give me an order or note to give to the Clerk of the Superior Court of Mecklenburg County to give to me the Exhibits which were introduced into court by my attorneys in the Mecklenburg trial. And the Clerk of the Court did refuse to give me my Exhibits in the case. The Clerk of Court (Superior, Mecklenburg County in Charlotte, N.C.) whose name is J. Lester Wolfe, said to me when I went to see him in person and asked for the Exhibits, "What did you say your name is?" I repeated it. He said "Why I wouldn't give you anything!" I got the Exhibits through a most unique circumstances which seemed to upset Mr. McCleneghan, WBTW's counsel, when several of his Exhibits were lost in the shuffle.

I offer to show correspondences between Mr. Arthur Goodman, my legal counsel in the first suit against WBTW in Mecklenburg County.

Sincerely,

CANDIS O. RAY AGENCY

REPLY BRIEF FOR APPELLANT

United States Court of Appeals
For The District Of Columbia Circuit

No. 24, 027

CANDIS O. RAY,

Appellant.

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

JEFFERSON STANDARD BROADCASTING COMPANY
(LICENSEE WBTW).

Intervenor.

Appeal from the Federal Agency, The
Federal Communications Commission.

CANDIS O. RAY

Pro se

2700 Connecticut Avenue, N.W.
Washington, D.C. 20008

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 24,027

CANDIS O. RAY,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

JEFFERSON STANDARD BROADCASTING COMPANY,
(LICENSEE WBTW)
Intervenor,

AN APPEAL FROM THE FEDERAL COMMUNICATIONS COMMISSION'S
ORDERS DENYING TO REVIEW STAFF RULINGS AND ORDERS PURSUANT
TO TITLE 47, U. S. C. A., SECTION 155 (d), (1), (4)

APPELLANT'S REPLY
TO APPELLEE'S AND INTERVENOR'S COUNTERSTATEMENT OF THE CASE

The Appellee states (p.15, f 6/) erroneously that "an action taken pursuant to delegated authority would then have the same force and effect as a Commission action, 47 U.S.C. 155(d)(3)". Actually, the Appellee should have quoted 47 U.S.C. 155(d)(1)(3) which states the following: "(3) Any order, decision, report,

or action made or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4) of this subsection, shall have the same force and effect, and shall be made, evidenced and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission." (Underscoring by Appellant.)

The above referred to "paragraph (4) of this subsection" of Title 47, U.S.C., Section 155 (d)(1)(4) states the following:

"(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken pursuant to any delegation under paragraph (1) of this subsection."

The above referred to "paragraph (1)" of subsection (d), Title 47, Section 155, U.S.C. upon which the preceding rule relies states as follows:

"(d)(1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions(except functions granted to the Commission by this paragraph and by paragraphs (4),(5), and (6) of this subsection)

Nothing is stated in (above) paragraph (d)(1) referring to any power of delegating authority under the paragraph (3), as cited by Appellees in its Brief (p. 15, f.6/).

The Appellee FCC has erroneously held that the herein complaint is a "contract matter" and a "private controversy" over which it has no jurisdiction. And has, throughout all the years this complaint has been before the Commission on "Questionable Business Practices" and "Misrepresentations" (filed December, 1960 under provision of 309(c) of the FCC Code (SR 1-21) prejudiced Appellant and harassed her with continuous opinions, rulings and letter correspondences contending that it has no jurisdiction over "private controversy" matters and contract matters (at staff level, as the record reveals), and refusing to examine the evidence offered on the "Misrepresentation", and permitting the Intervenor to wilfully evade answering charges as they specifically refer to the "Misrepresentations" (See R 122-A through 302, filings by Appellant's Washington, D. C. attorneys re refusal of Intervenor to respond to charges, with the sanction of the Appellee FCC, which ruled in favor of Intervenor, permitting the evasion).

It is noted that the Appellee states that the herein complaint does not go back as far as the first filing by Appellant in December, 1960; it has nevertheless, attached to its (Appellee) Brief the FCC letter of license renewal to Intervenor dated May 17, 1961 (Appendix B SR-147) resulting from the said complaint, in which the following quote appears: (Para. 3)

"The Commission has consistently taken the position that, with respect to private controversies, such as is referred to above, it will not attempt to resolve the issues therein but will leave their resolutions to the appropriate courts pursuant to local law."

Although Appellant has repeatedly stated to the Commission that she is fully aware that the Commission has no jurisdiction

over private controversies and contract matters, as her complaint and petition filings reveal, the Commission continues to rule on the private matter, contrary to the charge of "Misrepresentations" of licensee, with evidence adduced. The incredible ruling by the FCC Broadcast Chief in letter notice of license renewal to Intervenor dated January 26, 1967 (Appellee Brief Appendix C page 5, p 2) states as follows:

"it (Appellant's complaint) would only bear on whether a contract existed and not on the issue of alleged misrepresentation."

The subsequent order following above opinion and ruling released October 27, 1967 (R 304 and Appellee Brief, Appendix E) states that the Commission refuses to. "review the actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above -entitled application, and on May 23, 1967 which denied Miss Ray's petition requesting reconsideration of that grant." 1/

Although the existence of the contract between Appellant and Internevor is proved (See filings By Appellant's attorneys (R 123-178, Attachments #1 through #7), the contract matter is not and was never the Appellant's complaint before the FCC, yet the FCC continues to try to make it so!

Appellant's complaint, drawn out and prolonged capriciously by the FCC, with repeated extention of time granted Intervenor, has further damaged Appellant because of the time element involved and the dereliction of the FCC in performing its duties.

1/ Re Rule 30(b)(c) it was agreed between Appellee and Appellant that the appeal herein would go up on the original record pursuant to Rule 30(f), and Appellee requested extention of time (See record) so that Appellant could furnish it with copies for the record. Appellant now has attached pertinent exhibits to Rule 30(f).

Revealing capricious and arbitrary rulings and opinions the Appellee states (p. 2 & 3) that "It is noted that her controversy with television station WBTV had been in existence 'for almost two decades'" in its reference to its Memorandum Opinion and Order (Appendix A attached to Appellee's Brief and found App. 2 attached to Appellant's Brief), whereas the complaint was filed with the Federal Communications Commission in December, 1960, which is not two decades. Again the Appellee is bothering itself with the private dispute instead of the filed charge of "Misrepresentation", and further prejudicing Appellant by its prejudiced rulings, refusing to examine the offered evidence, and permitting the Intervenor to evade answering specific charges, as referred herein. (See Appellant's petitions and specifically the APPLICATION FOR REVIEW (R 232-248) filed June 26, 1967 by the Washington law firm Molnar and Gammon.)

The Appellee states in its above referred to Memorandum Opinion and Order (Appendix A, Appellee's Brief) incorrectly that the Commission has considered Appellant's herein complaint "for the past four renewal periods. And showing further bias states "There is clearly a need for administrative finality."

This Court has held that the Commission must first conform to the law before it can effect "administrative finality" in that all avenues of offered evidence be explored and examined before effecting "administrative finality":

WARD v. FCC, 1939, 108 F.2d, 486, 71 APP. D.C. 166

"The United States Court of Appeals may not

direct the Commission as to the routine of its administrative procedure so long as the Commission conforms to the law."

This Court further rules that after the Commission has complied to the law and its duties in fully examining the offered evidence, then its decisions shall be "administrative finality":

L. B. WILSON, INC. v. FCC, 1948, 170 F 2d 793, 83,
U. S. APP, D. C. 170

"The scheme for administration of this chapter contemplates that Commission apply its expertise in exercise of its primary jurisdiction and that after it has done so its decision shall have "administrative finality",

The Appellee states in its referred to Memorandum Opinion and Order (Appendix A, Appellee's Brief) that the Appellant filed her Application For Review Against the Actions of the Chief, Broadcast Bureau, on the date December 22, 1969, whereas the actual date of filing is December 19, 1969 (R 527) as evidenced in the record.

RULINGS KEPT AT STAFF LEVEL

1. Appellant filed Application for Review through her Washington, D. C. law firm, Molnar and Gammon (R 232-248) requiring full Commission review.
2. The Commission "en banc" denied to review the Broadcast Chief's rulings (APPENDIX E, Appellee Brief) by Order released October 27, 1967. (R 304) and further, based its denial to review on "staff's recommendations".
3. FCC Commissioner Kenneth A. Cox wrote to Appellant

on December 20, 1967 (Appendix H, Appellee's Brief) (SR 250) stating that the "en banc" order by the Commission denying to review the Broadcast Chief's rulings (referred to above in paragraph 2) was based on the fact that "staff's representations were considered".

Staff representations should not have been considered, as the Application for Review is appealing the staff opinions and thinkings, which had been rendered capriciously and arbitrarily.

4. Mr. Henry Geller, FCC General Counsel, had advised Appellant that the Commission had been letting the Broadcast Chief handle the complaint all the way through.

5. The letter to Senator Philip A. Hart from FCC Chairman Hyde dated September 6, 1968 (SR 279 & Appendix I, Appellee's Brief) was composed by staff, as was reported to Appellant by Chairman Hyde when she was in his office..

Attention is directed to paragraph 6 of above letter addressed to Senator Hart from the FCC wherein it is stated that "Miss Ray then followed with a letter to me on February 12, 1968,". The referred to letter dated February 12, 1968 accompanied an affidavit of the same date executed by Appellant (Attached hereto, Appendix A) whereon the Commission refused to act - and still refuses to act - and is the reason for the report to Senator Hart of the Judiciary Subcommittee.

6. The FCC stated that it had acted on the affidavit (Appendix A, above referred to) and had received a response thereto (See Appendix B, attached, identified as a letter from my attorney, Mr. A. Philip Towsner, to FCC General Counsel Mr. Henry Geller (p. 4) as a result of a conference in Mr. Geller's office at which time Appellant was present when it was reported by Mr. Geller that the Commission had contacted the witness Samuel Zurich in reference to

response to the affidavit (App. A, attached). The Appellant contacted Mr. Zurich upon leaving Mr. Geller's office, and Mr. Zurich reported that he had not been contacted at all in reference to the above mentioned affidavit dated February 12, 1968 (Appellant offers proof.)

Appendix C (Attached) is identified as an affidavit executed by a well-known and prominent Washington, D. C. attorney, who specializes in the Communications field and who accompanied Appellant to New York for the stated conference with Mr. Zurich. At which conference Mr. Zurich assured Appellant and Affiant that he would contact station WBTV and request a copy of his statement but that he would have to tell station WBTV why he wanted it (See Appendix C, attached).

Receiving no word from Mr. Zurich in response thereto, the Appellant telephoned Mr. Zurich on March 24, 1964, on advice of counsel, and as the records disclose, whereupon she was advised by Mr. Zurich that he had not contacted her because station WBTV (Intervenor) had refused to release his statement for her, but they (WBTV) had read his statement to him over the telephone, and there was no mention of "contract" in his statement (See R. 123-178, Attachment IA, a letter from Mr. Zurich to FCC dated December 14, 1966 — which letter from Mr. Zurich was mailed to the FCC in lieu of the requested affidavit by the FCC in its letter demand dated December 9, 1966 (Attachment 12, R 123-178), stating that Mr. Zurich put into a sworn statement exactly what he had said to FCC Broadcast Chief, Robert Rawson, in above letter dated December 9, 1966. The request was ignored by Mr. Zurich,

and the FCC Broadcast Chief did not request again of Zurich to clarify the exact statements quoted in the Broadcast Chief's letter above referred to (Attachment 12, R 123-178). It has been established that the Broadcast Chief has been handling this complete case, by delegated authority.

Other than the Zurich incident, herein, the FCC has permitted the Intervenor to evade answering specific charges, and permitted the refusal of Intervenor (WBTV) to account for and deal with issues which will determine the merits, and further accepted from Intervenor the sworn statements of Officers of the licensee WBTV speaking for the persons with whom Appellant had the direct dealings, refusing to supply statements from those WBTV employees with whom Appellant had the dealings. The Appellee further accepted, without questioning or requesting verification, the two sworn statements of one Mr. Charles Grutchfield (Officer of Intervenor) wherein decided contradiction of fact issue prevails (R 250-274, Affidavit dated July 10, 1967 and R 300-302, Affidavit dated July 31, 1967).

As the record reveals, the Appellee has acted on all filings herein, including the oppositions and responses thereto by Intervenor beginning on date November 24, 1969 (Complaint filed by Appellant 2/ (R 480-482 & Appellant Brief, App. 7) through all filings of the Intervenor and Appellant, through date February 16, 1970 when it released its Memorandum Opinion and Order (R 527). All of the above actions by the FCC reveal that the Appellee did not consider the complaint dead or "stale" by its timely actions, ruling on the seasonal filings of Appellant and Intervenor, as the record discloses thereby, the October 27, 1967 Order cannot be final order.

2/ See App. J of Appellees Brief, which is also attached to Appellant's Brief as App. 6, identified as Commission action on complaint, and all following actions by FCC on 1969 filings.

Appellant has requisite standing here under Title 47, U. S. C. Sec. 405 which gives standing to any "person aggrieved or whose interests are adversely affected" by an order, decision, report or action taken by the Commission or its designated authority. The Appellant's home and business interest and family are located in the Charlotte, North Carolina area, and the sad tragedy of the long and unfortunate incident is that Appellant was forced to close her agency business in Charlotte and her home state, as a result of the deliberate breach by WBTV and its resulting misrepresentations to the Commission. At that time station WBTV (Intervenor) operated a monopoly television station and Appellant had no choice but to close her agency after having spent over \$23,000.00 in the expectation of Intervenor (WBTV) holding good faith with its agreement and contract with her. Appellant merely works in Washington, D. C. Her home, family and business investments are all located in the Charlotte area where Appellant still votes, and maintains residence.

Although the merit of the program "Let's Cook Quick", whether it be good or bad by the consideration of Intervenor (WBTV)-(However, Appellant had more experience in producing television shows than anyone at station WBTV whose employees (Zurich) admitted to the FCC in correspondences that they at WBTV were new to the business - has nothing to do with the "Misrepresentations" by the licensee WBTV to the Commission. Whether or not a contract EVER EXISTED is not the complaint herein. And the contract matter should not be ruled on, as Appellant has repeated over and over. And in ruling on the appeal herein, this Court itself has held the following:

"*****but it is not Court's duty to review determinations

of "fact", in narrow, colloquial scope of that concept." FCC v. RCA COMMUNICATIONS App. D. C. 1953, 73 S.Ct. 998, 346 U. S. 86, 97 L.Ed 1470

CONCLUSION

For the reasons stated herein it is respectfully requested that order issue for an evidentiary hearing before the F. C. C. for purposes of clarifying the conflicting sworn statements in the record.

Respectfully submitted,

CANDIS O. RAY
Appellant, Pro se

2700 Connecticut Avenue, N. W.
Washington, D. C. 20008

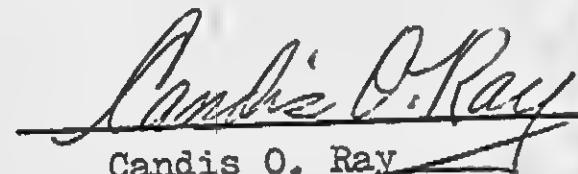
September 8, 1970

A F F I D A V I T

I, Candis O. Ray, being first duly sworn, deposes and states as follows:

1. That on date September 11, 1967 I talked on the long distance telephone with Samuel Zurich who was at the telephone number Plaza 7-5700 in New York City. My records substantiate the same.
2. That Mr. Zurich stated to me at that time during the same telephone conversation that his reports in his letters to me of dates January 3, 1962, January 3, 1964 and April 27, 1964 concerning his statement being on file with WBTB are absolutely accurate, and that he has not contradicted himself in his reports to me in the above mentioned letters and in his reports to the FCC (see FCC letter to Zurich dated December 9, 1966 re Zurich's telephone conversations with FCC's Mr. Robert Rawson; Zurich's subsequent answer to FCC re same dated December 14, 1966. Also, Zurich's letter dated April 2, 1965 addressed to FCC.)
3. I have never stated that Mr. Zurich's statement which he has reported is on file with WBTB is in the form of a signed document as an affidavit.
4. Mr. Zurich reports to FCC that his reference to his statement on file with WBTB which would "refresh" his memory "if so required" were the notes which Mr. Miller WBTV attorney, was taking down on what he said when he gave his statement "orally" in the referred-to conference in Mr. Crutchfield's Office.
- X 5. WBTB has filed a sworn statement with the FCC that no notes were taken on what Mr. Zurich said during that referred-to conference in Mr. Crutchfield's office.
6. Mr. Zurich firmly contends to affiant that his letters of above mentioned dates to her contain the truth, and that his statements to her and to the FCC do not conflict.

Further affiant saith naught.



Candis O. Ray

Sworn to and subscribed before me
this 12th day of February, 1968

(Signed) SANDRA O. OLSON
Notary Public DC

My Commission expires:

April 14 1971

Attachment 9

Philadelphia • New York • Chicago • Detroit
Baltimore • San Francisco • Hollywood • Honolulu

N.W.AYER & SON INC.

Rockefeller Center, 1271 Avenue of the Americas, at 50th Street
New York City 20, Plaza 7-5700

January 3, 1962

Miss Candis O. Ray
Candis O. Ray Agency
1500 Massachusetts Avenue, N.W.
Washington 5, D.C.

Dear Candis:

I get the impression from reading your letter that you are both successful and contented with your work in Washington. You are located in one of my favorite cities in the country.

There are two basic reasons why I cannot provide you with the affidavit you request. First of all, I honestly don't remember the minute details of the events surrounding the program you proposed to WBTW. Secondly, everything I experienced while working on this program is a matter of record with the attorneys representing the Jefferson Standard Broadcasting Company. I gave a complete accounting of the case, as I knew it, at the time this first became an issue. It would be unwise of me to attempt to recall a particular detail of an incident that took place more than nine years ago, with the risk of contradicting a statement I made at that time. I'm sure you can appreciate this.

Thank you for the consideration of a check for my troubles. I am returning it with this letter.

I am glad to know that you are doing well. My best wishes for your continued success.

Cordially,

Sam

Samuel C. Zurich

att.
cc:

Attachment 10

Philadelphia • New York • Chicago • Detroit
Boston • San Francisco • Hollywood • Honolulu

N·W·AYER & SON, INC.

Rockefeller Center, 1271 Avenue of the Americas, New York City 20
Telephone Area Code 212, Plaza 7-5700

January 2, 1964

Miss Candis O. Ray
Candis O. Ray Agency
1500 Massachusetts Avenue, N.W.
Washington 5, D. C.

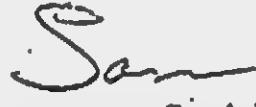
Dear Candis:

Your letter of December 28 leaves me with the impression that you are unsure of my integrity. I assure you that I can be trusted to account for the details surrounding your experience with WBTV in 1952 truthfully, should I be required to do so.

When you phoned me about a year ago I told you I had made a complete accounting of this case, as I experienced it, immediately after it happened. I did this as an employee of WBTV and my statement is currently filed with them. It is accurate and will certainly serve to refresh my memory if required. I am sure you will understand, therefore, why it is impractical for me to supplement that statement at this time. X

I am glad to know of your success in Washington. It sounds like you're having fun. Continued good luck in the year ahead.

Cordially,


Samuel C. Zurich

bk

Attachment 1

Philadelphia • New York • Chicago • Detroit
Baltimore • San Francisco • Hollywood • Honolulu

N·W·AYER & SON inc.

Rockefeller Center, 1271 Avenue of the Americas, New York City 20
Telephone Area Code 212, Plaza 7-5700

April 27, 1964

Miss Candis C. Ray
Candis C. Ray Agency
1500 Massachusetts Ave., N.W.
Washington, D.C.

Dear Candis,

Your letter of April 23 surprises me. I thought we had covered this subject thoroughly enough to be understood.

It would be unwise of me to release any statement to you knowing that a statement is already registered with the Jefferson Standard Broadcasting Company. I indicated to you that there is no reference to a contract in that statement. Jefferson Standard preferred not to release this statement to you.

X
That brings us up to date. Since I have no need to obtain a notarized letter, I am returning your offer to pay the notary fee.

Cordially,



Samuel C. Zurich

A. PHILIP TOWNSNER

ATTORNEY AT LAW

—
EXECUTIVE 3-3101638 WASHINGTON BUILDING
15TH & NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005

April 6, 1970

Henry Geller, Esquire
 General Counsel
 Federal Communications Commission
 1912 F Street, Northwest
 Washington, D.C. 20554

Re: Candis O. Ray
 v.
 Federal Communications Commission
 D.O. 24027

Dear Mr. Geller:-

The Petitioner and the undersigned reviewed the records of F.C.C. as filed in connection with KSTV and find that certain chronological and relevant documents are missing.

The records did not contain the following:

- 1. The five page letter of ~~Petition for~~ License Renewal (KSTV), addressed to Petitioner from F.C.C., dated January 26, 1967, upon which the Petitioner based the herein Petition for Reconsideration filed with F.C.C. on February 27, 1967.
- 2. Petitioner's complaint dated August 22, 1969, referred to by KSTV in its letter dated September 2, 1969.
- 3. Petitioner's response of September 11, 1969 to KSTV's letter of September 2, 1969.
- 4. The purported letter of reply, by one Samuel Zurich, addressed to F.C.C. in reply to Petitioner's affidavit of February 12, 1968, in which Petitioner specifically requested action by F.C.C.

The records on its face show that there exists specific contradictory statements, such as:

- 1. Affidavit of Petitioner and the contra consisting of a reply thereto, by letter form, from Samuel Zurich, inspite of F.C.C.'s request that his reply be in affidavit form.

APPENDIX B
(a)

A. PHILIP TOWNSER

ATTORNEY AT LAW

—
EXECUTIVE 3-3101

638 WASHINGTON BUILDING
15TH & NEW YORK AVENUE, N. W.
WASHINGTON, D. C. 20005

Page Two-

2. Affidavit of Mr. Don Bilger, a Washington attorney, dated January 27, 1964 is in direct conflict with the written statement of Samuel Zurich.
3. Certain affidavits of officers and counsel of WETV contradicting affidavits of petitioner herein.
4. Certain affidavits by persons outside the concerned parties herein in direct conflict with those certain affidavits referred to in item 3.

This complaint matter was originally and formally filed with F.C. on November 20, 1963 on charter of "Questionable Unlawful Practice and Other Unjustifications" and not the existence of any conspiracy, and in light of the numerous contradicting affidavits and statements, a hearing should have been held.

It will be appreciated if you will cause the said file to be complete as soon so that I may be able to review the same.

Sincerely yours,

A. PHILIP TOWNSER

A. Philip Townser

c.c. Howard Chapin
Chief, Appellate Section
Department of Justice

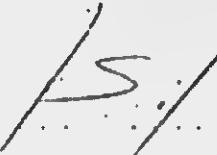
Mr. Nathan J. Carlson, Clerk
United States Court of Appeals for the District of Columbia

AFFIDAVIT

Affiant, being first duly sworn, deposes and states as follows:

1. That affiant is a partner in the law firm of Smith and Pepper, Washington, D. C.;
2. That in the latter part of January, 1967, affiant accompanied Miss Candis O. Ray to New York City for the purpose of meeting with Mr. Sam Zurich and obtaining a copy of the written statement referred to in Mr. Zurich's several letters to Miss Ray which affiant understands are on file with the Federal Communications Commission;
3. That at the meeting held at that time between Miss Ray, Mr. Zurich and affiant, Mr. Zurich was asked to obtain a copy of such written statement;
4. That to the best of affiant's information and belief, Mr. Zurich responded he would try to obtain a copy of his statement, but would have to tell WBTV why he wanted a copy.

Further, affiant saith naught.


Donald E. Bilger

Washington))
)) ss.
District of Columbia)

Sworn to and subscribed before me this 24th day of July, 1967, by the said Donald E. Bilger, Esquire.

Notary Public

My Commission expires:

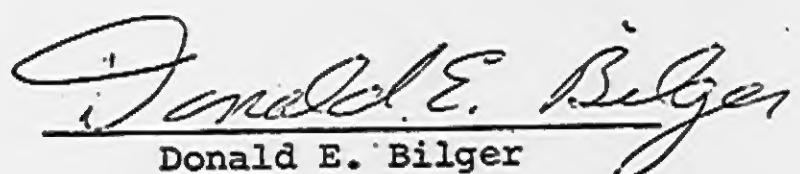
APPENDIX C
(a)

AFFIDAVIT

Affiant, being first duly sworn, deposes and states as follows:

1. That he is the same Donald E. Bilger who executed an affidavit appended to a certain Reply To Opposition To Application For Review filed with the Federal Communications Commission July 24, 1967 (BRCT-55).
2. That he wishes to correct a typographical error in said affidavit, to wit: in paragraph 2 the date "January, 1967" should read "January, 1964."

Further affiant saith naught.



Donald E. Bilger

Donald E. Bilger

Sworn to and subscribed before me this 26th day of July,
1967.



Frances R. Atwood
Notary Public D. C.
Frances R. Atwood

My commission expires:
November 30, 1969

APPENDIX D
(5)

Philadelphia • New York • Chicago • Detroit
Boston • San Francisco • Hollywood • Honolulu

N·W·AYER & SON^{INC.}

Rockefeller Center, 1271 Avenue of the Americas, New York City 20
Area Code 212, Telephone 757-5700

January 27, 1965

Miss Candis O. Ray
Candis O. Ray Agency
1500 Massachusetts Avenue, N.W.
Washington, D.C.

Dear Candis:

I don't recall a reference to the number of rehearsals of "Let's Cook Quick" in my WBTV statement. I don't know if there is a statement by Glenn Johnson in the station's files.

With Washington being the heart of the social and political activity once again, I assume you are very busy and successful. I hope you have a prosperous and happy 1965.

Cordially,



Samuel C. Zurich
Vice President

pb

APPENDIX E

Candis O. Ray and Associates

PUBLIC RELATIONS

2700 CONNECTICUT AVENUE, N. W., WASHINGTON, D. C. 20008

WASHINGTON PHONES:
(202) 223-1113
(202) 463-9495

CABLE ADDRESS:
"RAYCONVENE"

October 21, 1969

The Honorable Rosel H. Hyde
Chairman, Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: Licensee WBTV
Charlotte, N. C.

Dear Chairman Hyde:

May I please hear from you concerning my correspondence of date September 11, 1969 re above captioned licensee.

It was offered by you that a meeting would be held on this matter with the FCC Officials present and my counsel, which agreement was confirmed in letters dated August 22, 1969 and September 11, 1969.

You advised me that you would set the date for this hearing and I will appreciate it very much if you will please advise date and hour.

As previously discussed, it will be convenient to have the meeting in my office or at the FCC.

Your attention to this matter will be most appreciated, as the hearing involves the renewal of license for WBTV, which renewal is pending under consideration of this complaint, and the existing discrepancies on the FCC records in this matter.

I understand that the date for renewal of WBTV license would be December 1, 1969, depending on no formal complaint against the station under investigation by the FCC, under regular procedural conformity.

However, in this instance, as you know, regular procedural conformity has been violated in the renewal of license for WBTV in 1967 as explained, and the hearing re same is demanded.

Most respectfully,

CANDIS O. RAY
CANDIS O. RAY

cc: R. Russell Egan, Esquire
James A. Gammon, Esquire

Copy mailed October 23, 1969 to FCC General Counsel
Henry Geller, Esquire, as requested by Mr. Geller.

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